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THE AUSTRALIAN LABOR PARTY[1]

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In *The Politics of Equality*, Leslie Lipson points out that modern party organization has "exorcised some of the old devils from the body politic but has invoked others that are new and, as yet, untamed."[2] Applying to parties John Dewey's statement that

"Individuals can find the security and protection that are prerequisites for freedom only in association with others—and then the organization these associations take on, as a measure of securing their efficiency, limits the freedom of those who have entered into them. . . . We have now a kind of molluscan organization, soft individuals within and a hard constrictive shell without. . . ."

Lipson adds: "How to harden the individuals and to soften the shell, both to the right degree, remains one of the outstanding political problems of our century."[3]

American parties are extremely soft-shelled mollusks—if, indeed, they have any shell at all. In contrast, the Australian Labor party[4] has as hard a shell as any mollusk in the political zoo. It deserves close study for other reasons: although Australia is a young nation, its Labor party

[1] The field work for this study was made possible by a sabbatical leave from Wellesley College and a grant-in-aid from the Social Science Research Council in 1946–47, both of which the writer gratefully acknowledges. She wishes to take this opportunity, also, to express her appreciation to the staffs of the many libraries who were so helpful. To the trustees and staffs of the New South Wales Public and Mitchell Libraries, Sydney, where she spent so many happy hours, she is especially grateful. This is not the appropriate time or place to acknowledge her inestimable debt to the many Australians and Americans whose interested coöperation made the year as pleasant as it was rewarding. The material in this article is part of a book on *Australian Parties and Politics* now in preparation. It may be added that the article was written before the coal strike of June-July, 1949, which led the Labor government to take drastic action against the Communist leaders of certain unions.

[2] Leslie Lipson, *The Politics of Equality; New Zealand's Adventures in Democracy* (University of Chicago Press, 1948), p. 241.

[3] *Ibid.*, p. 252.

[4] Hereafter cited as the A.L.P.

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may claim to be older than that of Britain; it is the only Australian party with a continuous organization antedating the creation of the Commonwealth in 1901; and it operates within a govermental framework combining federalism with fusion of legislative and executive powers. The successful political activity of CIO and AFL groups in 1948 has aroused discussion of whether American labor will continue to channel its activity in the future as it has in the past, or will assert its independence and organize an independent party.[5] As the labor movement in the United States ponders its future course, there is special point to a study of the circumstances under which Australian workers forged an independent party, the disciplinary devices it has developed, and some of the effects of this tight discipline.

I. BEGINNINGS

Before 1891, governments in the separate colonies of Australia were maintained in office by shifting combinations of groups, held together by the personal leadership of a Henry Parkes or a George Dibbs, and there were bitter cries of "government by chaos." In a sense, there was a *national* labor party even before the launching of the Commonwealth in 1901 laid the foundation for an Australian nation.

Organized in the 1890's, the labor parties of the mother colony of New South Wales, of Queensland and elsewhere, were the political expression of a labor movement which began much earlier, and which had unionized miners and itinerant shearers of the "outback," as well as skilled workers. The "bush" workers, who, in 1894, dropped the name Amalgamated Shearers' Union for the broader label Australian Workers' Union, were influential in the early political movement and today are a powerful affiliate of the A.L.P. In these early years, trade unionists operated as political "pressure groups," agitating for the eight-hour day, "one man, one vote," and other measures of vital concern to the workers. Occasionally candidates endorsed by the respective trades and labor councils sat in the parliaments of New South Wales, Victoria, and South Australia. Sometimes their salaries were paid by the unions, and in later years endorsement of programs accompanied the endorsement of candidates. With "roving commissions" to throw their support where it would promote labor's interests, these representatives maintained a friendly alliance with liberal, reformist groups.

The policy of rewarding one's friends and punishing one's enemies, so like the tactics of the AFL under Gompers' leadership, ended abruptly

[5] See, for example, Max Lerner, "The Outlook for a Party Alignment," *Virginia Quarterly*, Vol. 25 (Spring, 1949), p. 179; and various viewpoints expressed in "Next Steps in the Fair Deal," *New Republic*, Mar. 7, 1949, Special Section, Pt. II.

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with the "Great Strikes" of 1889-1894. This is not the place to recount in detail the tragic, dramatic story of those years of industrial conflict, in which shearers, wharf-laborers, seamen, and miners responded to the call of solidarity. With falling overseas markets and a reservoir of unemployed non-unionists to draw upon, the outcome was inevitable: the strikers were decisively beaten. It was a fight in which the workers felt that they had been unfairly beaten because those whom they had trusted had turned the strong arm of the state against them. At every critical juncture the troops had been on hand to protect the employer and the non-union "rat," and the "liberal" premiers, whom labor had been supporting, had called out the troops against them. With a sense of grievance came greater solidarity. Taunted by the press during the strike with "Don't Strike—Vote," they accepted the challenge literally. "Vote for Ryan, and down the Gatling-Gun" became the slogan of one of their early candidates in Queensland.[6] In the same generation when the AFL was firmly turning its back on the idea of an independent labor party, the Australian Labor party was born.

II. "SOLIDARITY"

The new party, however, was not built in a day or without travail. During these early struggles, certain institutional devices came into use which are an important part of the disciplinary machinery of today. In the "mother colony" of New South Wales, the term "labor party" was used as early as 1888, but it was not until 1891 that the party forged machinery for nominating candidates and framing a platform. Dissension among labor supporters in an important by-election in the working-class constituency of West Sydney the year before had shown very clearly the need for unity. As the *Australian Workman* so vividly pointed out:

> "Unlike the wild horses of the prairies, who, when pursued by wolves, stand in a circle, put their heads together, and present an unbroken array of heels to the foe, the workers are prone to circle with their heads out while their kicks are directed towards and against one another. This suicide policy must be altered. If labor would obtain a fair hearing, solidarity is the first essential. The country is on the eve of a general election. The watchword of labor now should be—organization for political purposes."[7]

Between October, 1890, and June, 1891, the "organization for political purposes" was hastily devised. "Labor electoral leagues" were created as basic units in the constituencies; a delegate convention en-

[6] *The Worker* (Queensland), Feb. 6, 1892. Ryan was successful in a by-election.
[7] Quoted in Lloyd Ross, *The Australian Labor Movement* (unpublished manuscript).

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dorsed the first platform of the New South Wales Labor party; and provision was made for a central committee. Selection of candidates was by ballot or "plebiscite" of members, and the discipline of the future was suggested in the requirement that candidates give a written pledge to resign upon being called upon to do so by a two-thirds majority of the membership, and promise, if elected to Parliament, to sit on the "cross benches." This was the first attempt to implement the basic principle so succinctly stated in the New South Wales constitution today: "The collective membership is sovereign." From that day to this, the party has never hesitated to cast off those, however powerful, who failed to conform to that principle.

When the votes were cast in June, the new party had won thirty-six of the forty-five seats contested, and held the balance of power in a parliament evenly divided between two other groups. Lack of unity and organization in the other political groups, and widespread dissatisfaction with the way in which the "great art and swindle of politics" had been played, contributed to this easy victory. But it was clear that solidarity and organization on labor's part had paid dividends.

Unity was soon shattered by a bitter conflict known in labor party annals as the "Solidarity Fight." The "watershed" dividing the parliamentary supporters of Henry Parkes and George Dibbs was the tariff or fiscal question, an issue on which the new party had taken no stand and upon which its members were divided. Labor sat on the cross-benches, and its vote on all questions was crucial. All agreed that labor should play the game of "support in return for concessions," but it could not agree on the tariff issue and its rivals were diabolically clever in framing motions designed to divide it. It was soon evident that the victory won at the polls was being lost in Parliament.

At this point, the "collective membership" rose in its wrath. At the second annual conference of the Labor electoral leagues, the storm broke. Conference demanded that on all questions affecting the platform, or the fate of the ministry, Labor candidates pledge themselves to vote "as the majority of the Parliamentary Labor party may in caucus decide." The "collective membership" had declared war on the parliamentarians, a fact quickly recognized by the parliamentarians, who fought back. The New South Wales Labor party quickly split into the "Solidarities," supported by the leagues, and those who defended the independence of the parliamentarians. Most of the sitting members, resenting dictation from outside Parliament and what seemed to them a reflection upon their integrity and ability, refused to take the pledge. Deprived of the right to compete in the "pre-selection ballot" for the Labor nomination, many ran independently, and in the election of 1894

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Labor was divided into "the pledged unfledged" and the "fledged unpledged." This was the first of many schisms, "breakaways," and expulsions which have rocked but never quite wrecked the party.

With the acceptance of the so-called "compromise" pledge of 1895,[8] the principle for which the "solidarities" had fought triumphed and what had previously been an inchoate band became a well-disciplined parliamentary army. The basic principle was firmly established that in their interpretation of the platform, parliamentarians were responsible, not merely to themselves or their individual constituencies, but to the "movement," speaking through its representative conference, and must take a pledge to that effect before they were entitled to run as Labor candidates. Modified but slightly, the 1895 pledge is carried in the rules of the New South Wales party today and has been adopted by the party organizations of the other states and of the Commonwealth.[9]

Caucus was not a new device, having been used in Australia and elsewhere long before the 1890's.[10] The "pledge," however, was a novel, pragmatic solution to a problem which had worried members of the new party from the beginning. "Liberal" allies had proved false to their promises; how could the movement make sure that those elected under the banner of the Labor party would be faithful to their trust?

Once the question of the pledge was settled, problems of organization pushed to the forefront. Although the Sydney trade unions had taken the initiative in the movement for an independent party in New South Wales, from the beginning it had been taken for granted that membership would be open to others. Reconciling the rival claims of "trades hall," the "bush" unions, and the non-union members in the local leagues to representation in the annual conference and the central executive committee led to many bitter struggles. The situation was complicated still further by attempts of the Australian Federation of

[8] The pledge, as drafted in 1895, bound the candidate, if elected, to do his utmost "to secure the carrying out of the principles embodied in the Labor Platform, and on all questions, and especially on questions affecting the fate of the Government, to vote as a majority of the Labor Party may decide at a duly constituted caucus meeting."

[9] In 1947, the New South Wales pledge read as follows: "I hereby pledge myself not to oppose any selected and endorsed candidate of the Australian Labor Party, New South Wales Branch. I also pledge myself, if returned to Parliament, on all occasions to do my utmost to ensure the carrying out of the principles embodied in the Labor Platform, and on all such questions, especially on questions affecting the fate of a Government, to vote as a majority of the Labor Party may decide at a Caucus meeting. I further pledge myself not to retire from the contest without the consent of the Executive of the Australian Labor Party, New South Wales Branch. . . . . I also pledge myself to actively support and advocate at all times the Party's objective—the Socialization of Industry, Production, Distribution, and Exchange."

[10] See Leslie Lipson, "Origin of the Caucus in New Zealand," *Historical Studies, Australia and New Zealand*, Vol. II, No. 5 (Apr., 1942), pp. 1–10.

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Labor, which had brought "bush" and "city" workers together in Queensland, to establish an intercolonial federation which would speak for the movement on both the political and industrial fronts. Consolidation of Labor's Electoral League and the political wing of the Australian Labor Federation into a new "Political Labor League" coincided with the movement to heal the breach between the "Solidarities" and the anti-pledge groups. Members of unions affiliated with the Australian Labor Federation, as well as others supporting the new "P.L.L.," were automatically entitled to membership in it, thus introducing the principle of party membership through union affiliation which has continued to the present time. With the dissolution of the Australian Labor Federation in 1899, affiliated unions were given direct representation in the conference, the conference was given the right to select most of the members of the central executive committee, and the real tug-of-war among competing groups was shifted from the executive to the conference. Since 1900, the right of affiliated unions to direct representation in conference has not been challenged and competing groups within the party have struggled to increase their voting strength within that representative body.

From the outset in the New South Wales Labor movement, it was taken for granted that the "collective membership" would select the candidates as well as control the program. In the early years, however, the leagues were often in the position of accepting any self-designated Labor man who offered himself, and some bad mistakes were made. The "Solidarity" fight tended to regularize "pre-selection" procedures and to tighten the control of the central executive committee over endorsements. The committee established its right to declare "bogus" those leagues which refused to support the pledge, and to withhold its endorsement from candidates who refused to sign it. The "pre-selection" ballot, tightly regulated by party rules, and the endorsement of candidates by the executive committee, were established as part of the machinery of nomination.

While these institutions were being forged in the "mother colony," parallel developments were taking place in Queensland, South Australia, and Victoria. The same problems arose, although not always in the same order, and for the most part the same solutions were found. Shortly after the separate colonies joined in the Commonwealth of Australia, independent Labor parties were organized in the remaining states of Tasmania and Western Australia.[11]

From the beginning of the Commonwealth, Labor members in the

[11] Western Australia was not organized as a colony until 1890.

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federal Parliament acted as a unit, elected a leader, and accepted the discipline of the caucus and the pledge. Building a permanent interstate organization outside of Parliament was more difficult. Although an interstate meeting in 1900 favored the establishment of a "Federal Labor Party," in the first Commonwealth campaign each state party functioned independently. In 1902, a second interstate conference, attended by six delegates from each state, adopted a platform and a pledge and agreed that conferences, rotating among the state capitals, should be held at regular intervals. Thus caucus and conference were established institutions before the interstate organization had a name, an executive, or a treasury. The 1908 conference dropped the non-committal title, "Political Labor Conference," for the designation "Australian Labor Party." Reluctant to limit their independent action, the state organizations, however, delayed the creation of a federal executive until 1915. At one point the federal organization blazed a new trail. In anticipation of an early rise to power in the Commonwealth, the 1908 Conference expanded the rôle of the parliamentary caucus to include the selection of cabinet members. This procedure was followed in choosing the Fisher ministry in 1910, and has since been used in the states.

III. LABOR CHARTS ITS COURSE

The architects of the new party were more interested in action than in doctrine, in social reform than in social reconstruction. It numbered in its ranks philosophical radicals, single taxers, land nationalizers, and Utopian socialists. Holding the balance of power in Parliament before it acquired the theoretical synthesis and intellectual tradition which the Fabian Society gave to the British Labor party, it forged its program the "hard way," substituting the artificial unity of caucus and the pledge for doctrinal unity.

Nevertheless, the men of the nineties were united by a common ideal, vague but important. It is an ideal best described by the Australian term "mateship," and better expressed by the poet than the politician.[12] However unformed their social philosophy, they firmly believed that workers were "mates," that their judgment and common sense could be trusted, and that all workers must have a "fair go." They were equally confident that the goal could be achieved by ballot-box methods. It was confidence in the judgment of their mates which led them to include in their constitution the principle that "the collective member-

[12] For an elaboration of this thesis by an able labor historian to whom the writer owes much, see Lloyd Ross, "The Philosophy of the Australian Labor Party," *Antioch Review*, (Spring, 1947), p. 123. The writer has been greatly assisted by Dr. Ross's unpublished manuscript, *The Australian Labor Movement.*

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ship is sovereign," and to implement it at a terrific sacrifice. From the outset, also, there was an important intellectual strand in the fabric of the party. The men who wove it were labor journalists, poets, and union leaders, rather than academicians; but the contribution they made was for that reason the more important and the more distinctively Australian. Some of them, like William Lane, the crusading editor of *The Worker*, and his successors, W. G. Higgs and H. E. Boote, who proudly nailed the banner of "Socialism in Our Time" to the mast of that paper, were vigorous exponents of democratic socialism. Nor should it be forgotten that the men in the shearing sheds read and pondered *Progress and Poverty* by Henry George, Bellamy's *Looking Backward*, and William Morris' *Dream of John Bull*. Within the unity of a democratic labor party, firmly grounded in a belief in the soundness of the collective judgment of their mates, they proposed to reconcile their diversities.

Except for the first platform in Queensland, the early state and Commonwealth programs were reformist rather than socialist in approach. The emphasis was upon electoral reforms; taxation of land values; conciliation of labor disputes; protecting the worker from long hours, industrial hazards, and cheap labor. The "great debate" over the socialist objective came in the interstate conference of 1921, when, after years of industrial unrest, attempts of militant left-wing groups to force the party to meet the challenge of the Russian revolution, and demands for direct action by I. W. W. groups, the party adopted as its "objective" the "socialization of industry, production, distribution, and exchange," with a statement of the methods to be followed in reaching this goal far-reaching in its implications. The words of the 1921 objective have not been altered from that day to this, but "practical" men soon emasculated the statement of method. Even before the 1921 conference adjourned, the thin edge of compromise was introduced by a resolution declaring that the party did not seek to abolish private ownership of the instruments of production "where such instrument is utilized by its owner in a socially useful manner and without exploitation." By amendments adopted in 1927 and 1930, references to worker's control and a Supreme Economic Council were eliminated, other provisions were watered down, and what had been an integrated plan became a collection of glittering generalities. Divided by intra-party conflicts and staggering from the impact of the depression, the socialist offensive was not resumed until after the Second World War. In the meantime, some dissidents had found refuge in the Communist party and factional struggles over credit policies had left their mark upon the thinking of the party.

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The depression of the 1930's struck Australia while a Labor government was in office. A conference of state premiers called under the leadership of Prime Minister Scullin recommended a drastic policy of deflation which, although bitterly criticized in certain sections of the Labor party, was put into effect by all governments except that of New South Wales, where Labor Premier J. T. Lang proposed to meet the state's financial difficulties by reducing the salaries of the "tall poppies" in government service and stopping payment of interest on government bonds. Lang was dismissed by the governor and eventually expelled from the party, but he became the hero of a left-wing group which firmly believed that the depression had been "manufactured" by foreign banking interests, and that the Premiers' Plan was a "plot" to reduce the standard of living of the Australian worker. "Socialization of credit," Lang's rallying cry, lived on in the thinking of many long after he himself had been driven from the party.

Although the first interstate party conference after the Second World War suggested that the federal government "give consideration, in cooperation with the State Governments, to the nationalization of basic industries," emphasis in the general election of 1946 was upon "security" rather than "socialization," and the A. L. P. was returned to power with no clear-cut mandate such as the British Labor party asked for and received the previous year. On the eve of the federal conference in 1948, however, attacks upon the socialist objective by an editor of a Catholic weekly and rumors of threats to divide the Labor party by forming a Christian Democratic party did not deter it from reaffirming unanimously the objective, and suggesting ways of achieving it.[13] In the meantime, nationalization of the private interstate trading banks by the Commonwealth Labor government late in 1947, which has sharpened the issue of socialization in state campaigns, will inevitably force this issue into the forefront of the Commonwealth election of 1949.[14]

In the fields of defense and foreign policy, the party has been torn by tugs-of-war among pacificists, nationalists, anti-imperialists, international socialists, "isolationists," and exponents of collective security. To one principle, however, the party has clung with dogged consistency

[13] The article referred to was written by Mr. Brian Doyle, associate editor of the *Catholic Weekly*, and was published in the *Sydney Morning Herald*, Sept. 20, 1948. The resolution of the 1948 Federal Conference stated that the objective would be attained by "constitutional means," national planning of economic, social, and cultural development, and the establishment of coöperative activities to train workers in the management and control of industry. It also provided for nationalization of banking, credit and insurance, monopolies, shipping, health services, and sugar refineries. (Australian News and Information Bureau, *Australian News Summary*, Sept. 30, 1948.)

[14] The Bank Nationalization Act, invalidated by the High Court of Australia, was appealed to the Privy Council, which upheld the judgment of the High Court.

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throughout its history—its opposition to any immigration threatening the standard of living of the white Australian worker. The wording of the "White Australia" plank is less invidious today than a generation ago, but it has not been eliminated, and the fairness and wisdom of its racial or economic implications are seldom publicly challenged.[15]

During the First World War, the efforts of William M. Hughes, Prime Minister and leader of the Labor party, to "conscript" troops for overseas service grew into a political cyclone which split the party and drove Hughes and many other leaders from the fold. For a generation, the party was haunted by the residue of bitterness left by this controversy. Torn by factionalism, Labor's foreign policy between world wars was a "collection of negatives, uncertainties, and compromises,"[16] with an ostrich-like isolationism predominating. Spurred by the urgency of the military situation during the Second World War, and under the wise, patient leadership of John Curtin, the party finally repudiated isolationism and emerged with a positive, independent foreign policy. Wholehearted support of Australia's allies was promised and given, the Atlantic Charter was endorsed, and the party stressed Australia's responsibility in implementing its principles. Mr. Curtin won his greatest triumph when the party consented to an amendment to the Defence Act extending the definition of "Commonwealth" to those territories in the Southwest Pacific declared by the Governor-General essential to the defence of Australia. This made possible conscription for service in the entire Pacific theatre, for all practical purposes ending the anomaly of two sets of troops—volunteers who could be sent anywhere, and "conscripts" who could be used only within the Commonwealth. The forthright rejection of isolation by the party's conference of 1943, which won favorable comment from some of its bitterest critics,[17] was reaffirmed by the federal conference in September, 1948. This most recent statement of party policy pledges full coöperation with the British Commonwealth and the United Nations, and its willingness to mobilize the full resources of the nation in event of attack.[18] Under the able leadership of Dr. H. V. Evatt, Minister of External Affairs and Deputy Leader of the party, Australia has played a leading rôle in implementing these policies through the machinery of the United Nations.

[15] The current wording is: "Cultivation of Australian democratic sentiment, development of an enlightened and self-reliant community, and maintenance of White Australia."

[16] Lloyd Ross, *The Australian Labor Movement.* unpublished manuscript.

[17] Notably the *Sydney Morning Herald.*

[18] Australian News and Information Bureau, *Australian News Summary,* Sept. 30, 1948.

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IV. PRESENT-DAY ORGANIZATION

Like the American party system, the Australian party system is federal in form, follows a hierarchical pattern of organization, and is essentially a two-party system. However, the differences are fundamental. In Australia, the candidate, the parliamentarian, and even the rank and file member, is part of a disciplined organization with avowed objectives and a recognized leadership. Sooner or later the "party line" is defined, and the non-conformist runs the risk of expulsion. Although party discipline is tighter in the Labor party than elsewhere, members are never as independent as in the United States. The rôle of the pressure group differs also. In Australia, each of the more important organizations has identified itself with a particular party and limits its pressure to that party. Like its English counterpart, the Australian party remains a voluntary, self-governing association. No state or Commonwealth law defines its membership, determines its organization, or tells it when and how it may nominate its candidates. The fundamental law of the party is defined in its own constitution, rules, and platform. The voluntary character of the party in Australia was stressed in an interesting case which came before the High Court in 1934. In denying a member of the Victorian Labor party the right to bring action against party officers for breach of contract and an injunction, the court stated:

"The organization is a political machine designed to secure social and political changes. It furnishes its members with no civil or proprietary interest. . . . The policy of the law is against interference in the affairs of voluntary associations which do not confer upon members civil rights susceptible of private enjoyment."[19]

In the opinion of the majority of the Court, members of the party executive were not responsible *at law* for violation of party rules, but as members of voluntary associations must resort to redress afforded them by the rules of their associations. What is true of the A.L.P. is equally true of every other party; grievances must be settled within the party. For this reason, the disciplinary procedures of the party are highly important.

Although Australia has never had a strictly two-party system, from the beginning of the Commonwealth it has closely approached it, the

[19] Cameron v. Hogan, 51 C.L.R. 358 (1934), p. 378. The case arose at the time of the schism over the Premiers' Plan. Hogan, formerly state leader and premier, who had been denied endorsement as an A.L.P. candidate by the party central executive, brought action against Cameron and other members of that body for breach of contract and injunction. The supreme court of Victoria awarded him nominal damages, but refused to grant the injunction.

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basic cleavage being between the A.L.P. on the one hand and an "anti-Labor" group, or groups, carrying on under a variety of names. Today three parties are represented in the Commonwealth Parliament: the A.L.P.; the Liberal party, successor to the United Australia party; and the Country party. The Communist party, small in voting strength and represented by only a single member in one state parliament (Queensland), maintains a highly efficient, noisy opposition outside the legislative chambers.

Turning specifically to the framework of the A.L.P., one finds a federation in which the respective rôles of the state branches and the federal organization have often been in dispute and are still not clearly defined. The fundamental law of the party is included in the constitution and rules of the six states and a brief, general constitution. The "little book," to use the words of the New South Wales handbook, is "the result of the labors of tens of thousands of good Labor men and women . . . " who "have hammered it out over 50 years. . . . "[20] Guided by a firm conviction that "the collective membership is sovereign," they have endeavored to implement this principle through machinery which has grown more complicated with the years. Alike in fundamentals, the structure of the several states varies in important details. By describing the organization of New South Wales, and then indicating the deviations from this pattern, the essential similarities and differences will become clear.

Membership in the New South Wales party is acquired either by being a member of a union affiliated to the party or by pledging oneself individually to uphold the constitution, platform, and pledge of the organization. Members of the Communist party or its auxiliaries are expressly disqualified. Dues, varying with the type of membership, must be paid, and members who are not "financial" may not participate in party affairs.[21] Tickets of membership, issued annually, bear a declaration of party loyalty signed by the member. The unions not affiliated with the A.L.P. today are either small organizations with limited financial resources or those like the miners and "wharfies" under Communist leadership.

Collectively, members influence party policy through both the trade unions and the local party branches. As most unions are affiliated with

[20] A.L.P., New South Wales Branch, *Rules and Constitution* (1945–46 ed.). The material which follows is drawn partly from this book and partly from interviews with party secretaries and attendance at meetings of two branches.

[21] Men who are members of affiliated unions pay 3 shillings a year; members of non-affiliated unions, 3/6; those not eligible to union membership, 5 shillings. The fee for women is 2 shillings. Old age and invalid pensioners, and the unemployed who have been financial members for two years, are exempted from payment of dues.

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the A.L.P., and most branch members are also union members, there is considerable overlapping between them. On the industrial side, representatives of most unions in the metropolitan area of Sydney participate in the weekly meetings of the Trades and Labor Council and engage in many a heated battle. This Trades and Labor Council is in turn affiliated with the Australian Council of Trade Unions. Outside the A.C.T.U. is the Australian Workers' Union, still a powerful affiliate of the A.L.P., although no longer holding a majority in conference or the executive.

Although the unions, the trades and labor councils, and the A.C.T.U. play a highly important rôle in shaping long-range party policy, to be effective their views must eventually be registered through the party organs. It is through the local party branch, successor to the "leagues" of the 1890's, that opinion of the rank and file is made known to the leaders, and the rank and file is kept informed about the plans of the leaders. The biweekly branch meeting is an important sounding board, a "party town meeting," and a business unit. During an election campaign, it becomes a highly efficient campaign committee as well. These basic units are the nerve centers of the party, and their vitality largely determines the vitality of the party. Any fifteen members of the party living in the same state electorate may establish a branch, but its affairs must conform to regulations outlined in great detail in the "little book" and are subject to the continuous supervision of the state central executive. In 1947, there were 375 branches, two-thirds of which were in the Sydney metropolitan area.

Tight discipline of the party is evidenced in sections of the constitution denying membership to persons whose conduct or actions "are contrary to the principles and solidarity of the A.L.P.," and providing for the suspension and expulsion of those guilty of "disruptive tactics or disloyal or unworthy conduct." Under circumstances to be described later, action of the branch may be appealed to higher party authorities.

The two most important officers of the branch are the president and the secretary. The president presides at meetings, and in a host of indefinable ways sets the tone and determines the *morale* of the group. The business affairs are largely in the hands of the secretary, who is also the *liaison* officer between the branch and the central executive. Branches may be declared "bogus" and dissolved by the central executive.

Although "old timers" within the Labor party shake their heads at the small attendance and speak of loss of vitality of the branches, political opponents are frankly envious of their value in keeping members active between campaigns, and many refer with admiration to the training in parliamentary procedure and forensics which members receive from these meetings. As one astute observer commented, "they

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stand out in any group." Regular attendance at the meetings of two branches in the Sydney area left the writer with the impression that the branch is still an important cog in the party machinery and that what goes on is considered important by the members. Certainly it was a liberal education in Australian politics. Important rules were usually observed punctiliously and were never treated lightly. On routine matters, the president was sometimes careless about calling for the "nays," or even waiting for the favorable votes before declaring that the "ayes have it," and inexperienced chairmen sometimes found themselves in procedural snarls; but there was seldom any suggestion of "steam-roller" tactics, dissenters were given a "fair go," and the ultimate decision conformed to the wishes of that part of the "collective membership" present at the meeting.

Between the primary units or branches and the very important state organization are "electorate councils" in the state and federal electorates. Branches are entitled to representation in these councils. The sparsely populated "far west" of New South Wales is an area presenting peculiar problems of organization, and here the "Barrier District Assembly" is given a large measure of autonomy and control over local organizations.

Within the state of New South Wales, the annual conference is the "supreme ruling authority." Affiliated trade unions, as well as electorate councils, are entitled to direct representation in this body, today numbering between 350 and 400 members. The Australian Workers' Union still controls the largest single block of delegates, but its vote is exceeded by the combined vote of the representatives of other unions. Resolutions for consideration by conference may be submitted by any affiliated union branch or electorate council. Hundreds of these, ranging from the trivial and the fanatical to those of vital importance, are included in the agenda of each annual conference.[22] It is impossible for each of these to be considered separately, and an agenda committee has the important task of sifting the wheat from the chaff, combining related resolutions, and recommending substitute ones. The power of this committee is very great, for it decides whether controversial issues are to be given the green light or kept in the background, whether conference is to be a rubber stamp, a "tribune of the people," or an undisciplined mob. Conference itself, by majority vote, may dissent from the recommendations of the committee, and there have been many instances in which it has taken the bit in its teeth and galloped its own sweet way, to the discomfiture of the agenda committee and the executive.

Australian conferences may lack the organized showmanship of our

[22] There were 509 items on the agenda in 1947; 679 in 1948.

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own party gatherings, but they are not without action, drama, and color. When Mr. Chifley, Prime Minister and leader of the party, visits the conference, delegates rise, sing "Advance Australia Fair," and give three cheers for "Chif." Press representatives are present, but broadcasting paraphernalia are absent, photographers are inconspicuous, and the emphasis is upon business, not ballyhoo. Important matters of policy are to be decided, feeling runs high, and the attention of the body must not be distracted from the business at hand. The central executive has recommended that the charter of the Katoombah Branch be withdrawn and one of its members expelled for "disruptive tactics." He is alleged to have referred to Mr. Chifley as "an apologist for the capitalist system," and to have refused to withdraw his criticism when called before the executive. Delegates speak for and against, one hears the whispered comment "of course he is a Commo," the resolution is passed with some dissenting votes. A resolution reaffirming the socialist objective and calling for its implementation is passed amid sarcastic comments about disposing of so important a matter in a scant fifteen minutes. Ugly stories of a "deal" go the rounds when the conference votes to reinstate a member who was suspended from the party for absenting himself from a crucial vote in the state Legislative Council. Debate on many resolutions is punctuated with charges of "Commo" from some and "red-baiter" from others. The executive has its way in spite of vocal opposition on the left.

In the determination of policy, the annual conference is of supreme importance; but between conferences it shares this function with the central executive. This body of thirty-odd members, elected by conference, is a permanent party secretariat with wide discretion in the interpretation of policy, and extensive disciplinary powers. It supervises the work of the branches, and is vested with power to discipline branches and members, to withhold endorsement from those presuming to run as Labor party candidates and to conduct the "selection ballots" in which Labor candidates are chosen. Finally, it is in general charge of finance and campaign strategy. Membership on the central executive is not to be taken lightly; it meets fortnightly and the seat of a member may be vacated if he absents himself from three consecutive regular meetings without reason. Secretaries are customarily reëlected, and with long continuous service are in a position to set the standard for branch activities. An easy-going secretary who winks at infractions of the spirit as well as the letter of the rules may wreck *morale*; one who drives with a firm hand may do much to raise it.

In each of the other states, the A.L.P. is organized along broadly similar lines. As membership is in the *state* organization, union affiliation

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is a state rather than a Commonwealth matter, and it is possible for a union to be affiliated with the A.L.P. in some states but not in all. In 1947, for example, the important Australian Railways Union was affiliated in New South Wales, South Australia, and Tasmania, but not in Queensland and Victoria. In Western Australia, where the trade union movement and the Labor party developed simultaneously, the dichotomy between the industrial and political wings of the movement, so important elsewhere, is absent. The A.L.P. speaks for the movement industrially as well as politically. Because of the vast distances, there is a larger measure of decentralization in the party, district councils exercising many of the functions of the state organizations elsewhere. Queensland and Western Australia, both large states with scattered populations, hold regular state conferences triennially instead of annually. In Queensland, the infrequency of conferences has contributed to the development of such rigid discipline by the central executive that there is widespread dissatisfaction. The situation is further complicated by the fact that the industrial workers are trying to break the traditional control which the Australian Workers' Union has maintained over the party executive. The organization of the party in South Australia deviates from the general pattern in several respects. Under a proviso which permits "other organizations," as well as trade unions, to affiliate with the party, the Socialist League has continued its association with the party. South Australia also provides for a "central council" of about 100 members, intermediate between the large annual convention and the small executive of thirteen members, which performs many of the functions vested in the central executive elsewhere.

Although the A.L.P. is committed to radical modification of the federal structure of the government, in its own framework it has tenaciously clung to federalism and state equality, in spite of frequent attacks upon these principles. The two interstate organs are the conference and the executive. In the federal conference, which meets regularly every three years, each state is entitled to six delegates, chosen as the state sees fit. Except in Queensland and Western Australia, these representatives are chosen by the respective state conferences.[23] Special conferences, which must be called when requested by the executives of at least four states, have been frequent.

Between conferences, the executive, composed of two representatives from each state, is the highest federal authority. Like the delegates to

[23] In Queensland, the executive chooses the delegates to the federal conference, and in Western Australia five are chosen by the district councils, the sixth by the state conference.

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conference, federal executive members usually are chosen by the conferences of the respective states. Meetings of the federal executive must be held annually, and are usually held quarterly. Subject to appeal to the federal conference, the executive is vested with broad powers, including "plenary power" to decide any matter which in the opinion of seven of the twelve members "affects the general welfare of the Labor Movement," and to declare "bogus" a state executive or state organization deemed to be acting contrary to the federal constitution, platform, or policy as interpreted by the federal executive. It is also competent to hear appeals on any matter decided by a state conference or executive, when leave to appeal has been granted by the state agency concerned. On all questions affecting members of the federal parliamentary labor party, decisions of the federal organizations are final.

In federal matters, these interstate organs would seem to constitute the "All Highest." Even over state agencies, they would seem to exercise considerable supervisory control. But the interpretation and implementation of these provisions has not been easy. Interpretations of the platform may differ. What is a "federal" question? And if a federal member, or a state member, fails to carry out the principles of the party, what sanctions may be applied? And by whom? With very limited financial resources, no power to endorse candidates, and largely at the mercy of the state organizations in conducting election campaigns, the federal agencies are likely to move cautiously, especially when challenged by New South Wales or Victoria, which together include two-thirds of the population of the Commonwealth.[24] They know that in the last analysis it is futile to press an issue unless they, and not the state agency, have the support of a majority of the "collective membership." With no body fairly representative of membership of the party throughout the Commonwealth, interpretations may differ, and there have been instances in which the state organs have successfully challenged the interpretation of the federal conference and executive.

[24] According to the 1947 census, population is distributed as follows:

Queensland	1,106,269
New South Wales	2,985,464
South Australia	646,216
Tasmania	257,117
Victoria	2,055,252
Western Australia	502,731
Northern Territory and A.C.T.	27,771
TOTAL	7,580,820

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V. "SELECTION"

Nomination of candidates by rank and file voting grew up with the Labor party, and today "pre-selection," or "plebiscite," is the rule in all states except Tasmania. Briefly, the steps are as follows: an advertisement in a labor newspaper inviting nominations; written nomination of the aspirant signed by a certain number of party members, accompanied by his pledge to abide by the decision of the selection ballot, to carry out the principles of the platform, and to conform to the collective judgment of caucus in legislative matters; endorsement of aspirants by the central executive; balloting by party members in the constituency; counting and announcing the results. Selection ballots are held well in advance of an expected election, e.g., in New South Wales the selection of candidates for the Commonwealth election expected late in 1949 was completed before the end of January, 1949. Details of the procedure vary in the different states. In some states, persons are eligible for nomination after they have been financial members for two years; in others, three years are required. The rules of some states prohibit "canvassing" or campaigning; in others it is permitted. Limitations upon campaigning are defended as a necessary safeguard against candidates whose only claim to recognition is ability to "tickle the ears of the multitude"; they are criticized as stacking the cards in favor of union secretaries whose wide acquaintance may be an initial advantage. Following the procedure in the general elections, preferential voting is used in selection ballots in New South Wales, Victoria, and South Australia.[25] Queensland has abandoned preferential voting in both general elections and the party "plebiscite," and here "first past the post" is the rule.

The endorsement of candidates vests in the central executive a discretionary power of great importance, used sparingly by some, more freely by others. In all states, endorsement is withheld if a person fails to conform to the pre-selection rules, refuses to sign the "pledge," is of questionable integrity, has opposed a selected Labor candidate, or is a known Communist. In some cases, however, it is claimed that the central executive goes far beyond these limits, pruning the lists of "militants" and indeed any one not acceptable to the existing leadership. These claims are voiced with particular heat in Queensland, where triennial conferences make difficult a speedy appeal from a ruling of the executive.[26]

Casting and counting pre-selection ballots is regulated in great detail and closely parallels the provisions of primary election laws in the

[25] In both the election and pre-selection, an "exhaustive ballot" is required; i.e., unless every name is numbered, the ballot is invalid or "informal."

[26] Also heatedly denied, it should be said.

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United States. There is one very important difference, however; as these rules are *party* rules, their administration is vested in party officers, and abuses must be corrected by appeal to the "collective membership" of the party.

In an effort to increase participation and minimize fraud in pre-selection ballots, South Australia has introduced a mail ballot, with interesting possibilities. Prepaid ballots are posted to all eligible members, and are centrally counted in the presence of scrutineers appointed by the aspirants for selection. Although there is some grumbling that union secretaries influence the votes of their members, there is general agreement that fraud has been reduced to a minimum. In spite of the prepaid ballots, however, participation is disappointingly low, only 20 to 25 per cent of those distributed being returned. The large number of names on some ballots, coupled with the requirement of an "exhaustive preference," tends to reduce the percentage of participation, which, however, was probably higher than under the old system.[27]

In the "tight little island" of Tasmania, different from the mainland in many ways, rank and file selection is not used. Instead, aspirants file application with the general secretary, and the twelve members of the state executive decide whether endorsement is to be granted or withheld. Occasionally the executive goes outside the list of applicants in endorsing a candidate. Party officers argue that selection ballots play into the hands of those "who promise the moon," and that the existing machinery makes possible tests of "suitability" as well as "acceptability." Some challenge this method as a violation of labor's traditional democratic principles, but in 1947 there was evidence of no concerted attack upon it.

Ever since its introduction, "pre-selection" has been bitterly attacked by Labor's enemies, and many party members are frankly critical of this time-honored institution. Many of the criticisms are the same as those aimed at the direct primary in the United States. Apathy, fraud, "rigging" of ballots by party officials, undue influence of union executives, and failure of the system to bring the "best men" into the service of the party are complaints frequently heard. During a particularly bitter intra-party struggle between the Australian Workers' Union and the more militant industrial workers for control of the party in New South Wales in the 1920's, there were charges of ballot boxes with "sliding panels," and of widespread tampering with the ballots. Numerous investigations by federal and state party agencies were followed by the expul-

[27] Accurate figures on the participation in selection ballots are hard to obtain; estimates range from ten to twenty per cent in various areas, with participation much higher in a keenly contested "blue ribbon" Labor constituency.

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sion of those alleged to be responsible for the frauds, and revision of the regulations governing the casting and counting of selection ballots. Present-day critics are less likely to emphasize fraud than apathy, control by party and union executives, and failure of the system to attract able leaders. Defenders of pre-selection frequently rely upon an argument which is so often advanced in support of the direct primary in the United States—that with all its faults it is superior to any other machinery so far devised. The insistence by some Liberals that somewhat similar procedures be introduced by that new party lends weight to the argument.

VI. THE PARLIAMENTARY LABOR PARTY

Ever since the "solidarity" fight of the 1890's, parliamentary members of the Labor party have been pledged to follow the collective judgment of the group on platform matters or questions affecting the fate of the government. In this area, responsibility is definite and disciplinary procedures are clear-cut. Parliamentarians are the servants of the "movement," But when there is disagreement over the implementation of party policy within a legislative assembly, the majority speaks for the movement and individual members must support their interpretation. Whatever differences divide the membership elsewhere, when the party faces its adversaries in parliamentary debate, it speaks with a single voice. Over the years, the implementation of these principles has crystallized into set patterns; and when the Labor party controls the government, "caucus" debates are decisive and are followed with keen interest by the nation. Although these discussions are supposed to be confidential, and no reporters are present, the newspapers usually carry fairly accurate reports of the proceedings. The press, which is strongly anti-Labor, finds many of its juicier political tid-bits in the sharp divisions of opinion and the heated debates which characterize caucus meetings. Although most newspapers apparently have direct access to caucus information, these "leaks" seem to arouse no righteous indignation within the Labor party.[28] Caucus procedure varies somewhat in different legislative assemblies, but a description of its operation at the Commonwealth level may serve to illustrate why it is such an effective device for securing party unity and cohesion.

What is officially designated the "Parliamentary Labor Party" is a joint meeting of Labor members of the Senate and House of Representatives of the Commonwealth Parliament. The group is small, which contributes to full and frank interchange of ideas.[29] After a general elec-

[28] The explanation usually given on these "leaks" is that some caucus members make a practice of giving such information to certain reporters in return for favorable publicity.

[29] In the past, there have been 75 members of the House of Representatives (including

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tion, caucus first elects its leader and deputy leader. When the leadership falls vacant, the previous deputy leader is not always elevated to that position. For example, in 1945, when John Curtin died, caucus passed over Mr. Forde, the then deputy leader, and chose Mr. Chifley, who had held the portfolio of finance. Leaders are customarily, but not inevitably, reëlected.

If the Labor party holds a majority of the seats in Parliament and has been vested with the responsibility of organizing "His Majesty's Government," caucus also selects the members of the cabinet, one of its own members acting as the "returning officer" responsible for conducting the voting and counting the ballots. As all party members are potential candidates for each office, before each ballot the list of members is called alphabetically and each in turn is asked if he wishes to stand. Voting among those who indicate their desire to do so is by preferential ballot, an "exhaustive" choice being required. Both the leader and the deputy leader are chosen from the House of Representatives, and by convention five cabinet ministers are chosen from the Senate, the remaining fourteen from the House. This procedure limits the discretion of the Prime Minister to distributing the various posts among the cabinet timber selected by caucus. Labor's opponents are caustic in their criticism of a system which they say often brings to the top persons unequal to the responsibilities of office. Members of the Labor party in Parliament privately refer to some choices as "disasters"; but in the minds of the rank and file selection of the cabinet by caucus is a logical application of the principles of *collective* party responsibility and mateship which run through all their thinking.

In the field of policy, caucus plays a continuous and even more important rôle. When Labor is in power, the line of policy runs from department to minister, to cabinet, to caucus, and then to Parliament. Caucus meets regularly once a week, and it has become customary for the cabinet to ask its approval of *every* proposal, regardless of its relation to the platform, before the measure is introduced in Parliament. It is customary also for the nineteen members of the cabinet to vote solidly for a proposal when it comes to caucus, although it may have been opposed by some of that body originally, Caucus seldom if ever initiates measures, but it sometimes adds amendments. Thus, while the scope of the authority of caucus has been extended beyond the strict limits of the platform, its rôle has become that of revision and veto rather than initiation. It is a brake rather than a spur. There is general agreement that it

one from the Northern Territory with limited voting privileges) and 36 members of the Senate. After the 1946 general elections, there were 76 members of the P.L.P. Since 1946, the size of Parliament has been doubled.

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is far from a "rubber stamp," that lively differences of opinion take place at its meetings, and that it makes vital decisions. In December, 1946, for example, caucus refused to support the cabinet's recommendation that Australia ratify the Bretton Woods agreements, insisting that action be postponed until federal conference had had an opportunity to consider the question. The following March, after the proposal had been supported by the federal executive, and a move for a special federal conference had failed, caucus finally took favorable action.

Haunted by memories of the wrath which the "movement" has visited upon the heads of party members who misinterpreted its wishes on the conscription issue in the First World War, and the Premiers' Plan in the 1930's, caucus is cautious about committing the party on policies outside the express terms of the platform unless the viewpoint of the "collective membership" has been indicated in federal conference; federal conference, in turn, is likely to play safe and wait for some clear-cut expression of opinion from the more representative state conferences and trade unions. This somewhat complicated machinery may play into the hands of the timorous, opportunistic leader who is eager to avoid action for other reasons. It is equally true that caucus sometimes acts boldly in matters clearly within the limits of platform commitments, when the leaders are convinced that such action is necessary to the party's immediate goals. A case in point was the decision to support the Bank Nationalization Act in August, 1947. Two years earlier, caucus had gone along with the leaders in recommending amendments to the Commonwealth Bank Act falling far short of nationalization; but when the High Court invalidated that part of the act empowering the Commonwealth to direct municipal authorities to bank with the Commonwealth, and Mr. Chifley was convinced that a frontal attack upon the private banks was essential to the public interest, caucus did not hesitate to support his decision, although it was one which might well jeopardize the party's chances in subsequent state and Commonwealth elections.[30] Branded by some of Labor's opponents as a "Communist-Labor plot" which went far beyond Labor's commitments in the 1946 elections, the action was defended by Mr. Chifley as within the spirit of the 1945 legislation, which had been approved by the electorate when it returned Labor to office in the election of 1946. Subsequently the action was approved by the powerful Australian Council of Trades Unions and the federal conference of 1948.

Since its introduction, caucus has been attacked as a threat to responsible government and an unwarranted and unwise interference with the

[30] Held invalid by the High Court of Australia, the 1947 act was appealed to the Privy Council. After its passage, the Labor party lost control of the government of Victoria.

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independence of action of the individual member. In the early days of the Commonwealth, Alfred Deakin argued that Labor "efficiency" was secured "at the cost of individual freedom" and raised the query whether, if Labor came to power, machinery which had been useful when the party was "fighting an uphill fight" might not, like the party "machine" in the United States, destroy "the liberty of the individual elector and the liberty of the individual representative."[31] George H. Reid, another of Labor's early critics, was even more outspoken:

"The voice which we hear in this chamber is not the voice of the man who speaks; it does not necessarily represent his own principles and his own opinion; it represents the view not of an individual conscience or an individual intellect, but of a collect conscience and a collect intellect."[32]

Labor accepts Reid's challenge; if the collective membership is to be sovereign, the "collect" conscience must prevail, and it is felt that caucus is an essential cog in expressing it. Although caucus is an ogre at which Labor's critics direct much criticism, it alone is not the key to Labor's success. The pledge, the endorsement of candidates by the central executive, and the tradition that the member is the servant of the movement are fully as important in the complex of party discipline. Believing that the only alternative to the collective judgment of the caucus is a party dominated by one man, and distrustful of the individual leader who tries to dominate his "mates," they accept group discipline. Repeatedly, in its stormy history, the movement has repudiated the leader who refused to conform to that rule, even at the risk of splitting the movement and sending Labor into the political wilderness for a generation. Critics never cease to wonder why Labor persists in what they view as "blowing out its own brains," but it is understandable to a party guided by the ideal of "mateship."

Although within the Labor movement it is generally agreed that caucus is essential to party solidarity and discipline, it has its critics. One source of dissatisfaction is the extension of caucus action to matters outside the scope of platform principles. Why, for example, should not Labor members exercise their independent judgment on such a question as salary increases for members of Parliament? The tradition that all cabinet members must follow the line of the majority when the question comes to caucus is frequently attacked. With nineteen votes in a group of seventy-odd, the cabinet may well tip the scales. Probably the most serious criticism comes from those who feel that the rôle of caucus is too *negative*, and wish it to have a more important rôle in *initiating* policy. They argue that caucus is no help to the member who is impatient to

[31] *Parliamentary Debates*, Vol. XIX, pp. 1342–1343, May 19, 1904.
[32] *Idem*, p. 1355.

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move faster than the leaders in implementing the socialist objective. Among some of the younger parliamentarians there is a disposition to feel that party *morale* would be greatly improved if occasionally members were left free to exercise independent judgment in speaking and voting on the less controversial bills. Unwillingness to subject oneself to rigid party discipline is sometimes given as the reason why able "intellectuals," sympathetic with the party, refuse to stand for election.

VII. CONCLUSION

For over fifty years, the A.L.P. has been a practicing democracy. Parliamentarians, party executives, and even conferences, are servants of "the movement." Caucus, the pledge, pre-selection, were pragmatic answers to problems which arose in the course of the years as the members attempted to carry out this basic principle. As it charts its future course, the labor movement in the United States may well ponder the lessons to be drawn from this experience.

Operating under conditions of a fusion of legislative and executive power and of federalism, the A.L.P. is a highly disciplined army. Federalism is a hard reality within the party as well as within the government, and certain problems flow from it; but it has not presented insurmountable obstacles to the development of unity, cohesion, and discipline within the federal Parliamentary Labor party. It has, indeed, succeeded in "exorcising the old devils" of disunity, personal government, and deadlocks characteristic of an earlier period of Australian history and of politics in the United States at the present time. But has it raised a new "devil"—a discipline too meddlesome at some points, too rigid at others? Machinery and disciplinary devices which served the party well when it held the balance of power between two equally strong political antagonists, or occupied the opposition benches, is less well adapted to a party entrusted with the responsibilities of office. By driving with so tight a rein, the party may discourage initiative and the generation of new ideas which are vital to any party, particularly one which claims to be the expression of a "movement." Without supporting the view that caucus is a sinister force usurping the powers of the government and undermining democratic institutions, one nevertheless may venture the suggestion that its discipline might be restricted to matters clearly falling within the area of party policy; and it might be given a somewhat more positive rôle.

The tightness of party discipline increases the importance of the machinery for framing policy. If members must conform to the party line, it is highly important that the "line" be an accurate reflection of

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the opinion of the party and the movement, and not the scream of a particularly vocal group or of an unscrupulous party dictator. Throughout its history, the A.L.P. has been torn by factionalism. It has been, and probably will continue to be, made up of many groups, pulling in different directions, and speaking with different voices. Unions and leagues, parliamentarians and non-parliamentarians, "trades hall" and the "bush" unions, opportunists and socialists, "militants" and moderates, "Commos" and Catholic Action, have fought to control the party organization and speak for the movement. The "struggle for power" within the party is too long and complicated a story to be related here. Close study of that record, however, points to the conclusion that although the existing machinery within the several states is far from perfect, in the long run the "collective membership" controls party policy and the action of the parliamentarians who implement that policy. Over and over again, those out of step with the movement have yielded to the lash of party discipline or left the party. During the First World War, when the conscription issue rocked Australia to its foundations, the course advocated by Hughes and Holman may or may not have been wiser and more far-sighted than the policy of those who opposed conscription for overseas service, but in the light of subsequent events it is clear that Hughes and Holman were out of line with the dominant opinion in the movement.[33] Perhaps the most serious criticism of present-day disciplinary procedures is that while it is easy to institute action against the venturesome leader who seems to be going beyond the bounds of clearly defined party policy, it is much more difficult to do so against those who are over-cautious in implementing the party's program.

It is at the Commonwealth level that the party machinery presents the most serious difficulties. Equality of state representation and the infrequency of federal conferences are serious obstacles to the swift, accurate reflection of a collective judgment on national issues. Eventually the opinion of the membership will be reflected in resolutions of local branches, state executives, conferences, local trades halls, and the increasingly powerful Australian Trades and Labor Council. These expressions of opinion are listened to with respect by the federal executive and federal conference. But in the meantime there is serious delay, the party is divided into two hostile factions, each claiming to speak for the party, and parliamentarians may have been forced to act. The

[33] The story of this controversy is ably told by H. V. Evatt, *Australian Labour Leader: The Story of W. A. Holman and the Labour Movement* (Angus and Robertson, Sydney and London, 1945). Holman was active in the New South Wales Labor party from its organization until he was forced out over the conscription issue.

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clumsy machinery contributed to the bitterness in the schisms over conscription in the First World War, the Premiers' Plan in the 1930's, and J. T. Lang's recurrent efforts to build a personal political machine in New South Wales. In the more recent debate over the Bretton Woods agreements, unnecessary discord might have been avoided if the question could have been submitted to a representative Commonwealth conference after full debate in the branches and unions. As Prime Minister and leader of his party during the darkest days of the Second World War, John Curtin used the existing machinery skilfully and successfully; but a leader without his clear understanding of, and sympathy with, the "sovereignty" of the "collective membership" may by-pass it, with disastrous results. As foreign policy becomes more important, and as an increasing number of domestic problems call for action by the Commonwealth, the need for a representative annual conference will become more acute.

Education of its membership is a function of primary importance in a party which expects as much of its membership as does the A.L.P. If the rank and file is to discharge its responsibility of *initiating* policy satisfactorily, it must have materials, machinery, and leadership, and an interest in the task. Although the party has never had the kind of theoretical synthesis and intellectual leadership which the Fabian Society gave to the British Labor party, there is an intellectual tradition which might be revived as the basis for such an educational movement. Labor journalists and poets made their contribution to this tradition in the 1890's, and in times of crisis the rank and file have shown keen interest in ideas and remarkable capacity to struggle with issues. There is tragedy as well as irony in the fact that there is less intellectual enthusiasm and interest in ideas when the party is in a position to carry out its program than when it is the opposition. In 1946–47, holding the reins of office in four of the six states, as well as in the Commonwealth, educational activity within the A.L.P. and most of the unions was at a low ebb. The Henry Lawson Labor College, launched with high hopes a few years earlier, maintained an anaemic existence, with little financial or moral support from the party branches, and less from the unions. The influence of the Workers' Educational Association, which sponsored an excellent program of lectures and debates, was limited largely to "white collar" workers and academicians. There was no daily labor newspaper, and the weeklies published by the state parties emphasized the factual and the non-controversial. Lack of an imaginative educational program in the A.L.P. had made it possible for the Communist party, with its flair for showmanship, to come dangerously near to capturing

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the intellectual leadership of the younger members of the labor movement. Skilful and imaginative leadership at the top and an intellectual revival at the bottom were imperative if the A.L.P. was to regain its vitality and formulate a constructive program which would challenge the imagination and win the support of old and young alike. Hopeful signs of such a renaissance were not lacking. In every state there was healthy self-criticism within the party, and small groups kept alive an interest in ideas. The "battle of the century" over the nationalization of the banks by the Chifley government has led to stimulating discussions and debates. A Fabian Society, organized in 1947, made its bow to the public with a pamphlet ably defending this action. Whether these are merely ripples or a turn of the tide should be evident when the party faces the electorate in the Commonwealth election of 1949.

The strength of the A.L.P. today, as always, depends upon the vitality of the branches. Apathy, intrigue, frustration, and defeatism are present. But the tradition of rank and file participation is strong, the machinery is intact, and members have confidence in the collective judgment of their "mates." These are important assets. On the other hand, the party suffers from a deep-seated suspicion of the "intellectual" which prevents it from making full use of those with special talents and training. Betrayal by certain intellectuals in the past, combined with a strong equalitarian emphasis in its thinking, has made the movement distrustful of the "tall poppies," especially those with superior academic training. It is an attitude which handicaps the party in clarifying its goals and developing a constructive program of "next steps" in its program of socialization. If the party is to be equal to the tasks of the future, it must utilize more fully those with special gifts and training who are in full sympathy with its traditions and objectives. There is a tradition to be revived, and there are plenty of good minds ready to respond to that call.

The men of the 1890's were united by a common ideal to which the party has always remained true. It was trust in the judgment of their mates which led them to incorporate in their constitution the principle that the collective membership is sovereign. In implementing that principle, the party has made many sacrifices in the past and is prepared to do so in the future. Parliamentarians, party executives, caucuses, and even conferences must bow to the collective judgment of the movement. Whatever its faults, it is a disciplined party with the power to govern. Its record suggests that Labor's increasing political activity in the United States may help to bring about greater unity and cohesion in our party system.

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REBUILDING THE GERMAN CONSTITUTION, II

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I. BASIC LAW AND OCCUPATION

On May 8, 1949—the fourth anniversary of unconditional surrender—the Parliamentary Council adopted at Bonn the Basic Law for the Federal Republic of Germany. This date was chosen intentionally to remind the German people that this provisional constitution is a way-station on the road out of the chaos which the collapsing Hitler régime left behind it. Any consideration of this Basic Law should start from the fact that the charter is not the creation of a free people, and that it will have to function within limits, both territorial and functional, which severely handicap its chance of becoming a genuine constitution, securely anchored in the basic convictions of the people. Its limits territorially are imposed by the refusal of the Soviet Union to permit the Germans living in their Zone of Occupation to express themselves freely concerning the charter. This raises the presumption, confirmed by other evidence, that these Germans would, by a considerable majority, accept the Basic Law if given a chance to do so. The charter's functional limits are imposed by the Western Allies, who decreed three basic limitations upon the German people's autonomy and independence: (1) the Occupation Statute, (2) the Ruhr Statute, and (3) the Inter-Allied Security Board. Of these, the Occupation Statute is much the most important, and encompasses the other two by its provisions. This is shown by the fact that the Letter of Approval, issued by the Military Governors on May 12, 1949, notes that acceptance of the constitution is premised upon the understanding that all governmental power in Germany, federal, state, and local, is "subject to the provisions of the Occupation Statute."[1] The Military Governors accordingly promulgated the Occupation Statute as of May 12. It is clear that, in a substantive sense, the constitution of Germany will be compounded of the Basic Law *and* the Occupation Statute. However, in the following pages only the Basic Law will be discussed explicitly.

The significance of this limitation can be most clearly seen in the fact that the occupying powers reserve to themselves, *inter alia*, the right "to preserve democratic government in Germany" (Art. 3). They furthermore stipulate that any amendment to the Basic Law "will require the express approval of the occupation authorities before becoming effective," and that any legislation will be disapproved if inconsistent

[1] See for this Statute and its background the previous instalment of this article. Its text is contained in Dept. of State Press Release No. 235 (Apr. 8, 1949).

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with the Basic Law. In short, the Allies undertake, through their representatives, to become guardians of the constitution, notwithstanding the fact that a "Constitutional Court" has been established under the Basic Law to watch over its integrity. It is in keeping with this general outlook that the Allies, in the same Letter of Approval, indicated certain reservations which will be mentioned at appropriate points below. Moreover, these reservations will be subject to further "interpretations" by Allied authorities in the light of experience; indeed, the Occupation Statute specifically provides that it will be reviewed within eighteen months, at the latest, "in the light of experience," and "with a view to extending the jurisdiction of the German authorities." It is reasonably certain that the Basic Law will be the "growing" part of the German constitution, while the Occupation Statute will "wither away." This is hinted at in the approving sentence with which the "Letter of Approval" opens: "In our opinion it [the Basic Law] happily combines German democratic tradition with the concepts of representative government and a rule of law which the world has come to recognize as requisite to the life of a free people." This frank acknowledgment of the existence of a German democratic tradition deserves some emphasis; it marks a turning away from certain earlier approaches.

II. THE PATTERN OF THE CONSTITUTION AND THE PREAMBLE

The Basic Law is divided into ten major sections, followed by a rather lengthy set of transitional provisions occasioned by the disappearance of German government and the consequent "interregnum" of the four years of uncertain authority and confused relationships (Arts. 116–146). The ten sections are: (I) Basic Rights (Arts. 1–19); (II) Federation (*Bund*) and states (*Laender*) (Arts. 20–37); (III) Federal Diet (*Bundestag*) (Arts. 38–49); (IV) Federal Council (*Bundesrat*) (Arts. 50–53); (V) Federal President (Arts. 54–61); (VI) Federal Cabinet (*Bundesregierung*) (Arts. 62–69); (VII) Legislation of the Federation (Arts. 70–82); (VIII) Federal Administration (Arts. 83–91); (IX) Judicial Authority (*Rechtsprechung*) (Arts. 92–104); and (X) Fiscal Authority (*Finanzwesen*) (Arts. 105–115). These ten sections are preceded by a preamble which only generally refers to the transitional nature of the document. In view of its overtones, it deserves quoting:

"Conscious of its responsibility before God and men, animated by the will to maintain its national and political unity and to serve the peace of the world as an equal member of an united Europe, the German people in the *Länder* Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North-Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Wuerttemberg-Baden, and Wuerttemberg-Hohenzollern have, by virtue of their constituent power,

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adopted this Basic Law of the Federal Republic of Germany so as to give a new order to the political life for a transitional period. They have acted also on behalf of those Germans to whom participation was denied. The entire German people remains called upon to complete the unity and freedom of Germany in free self-determination."[2]

This preamble does not differ in solemnity from the preamble of the Weimar constitution. It omits reference to the Nazi régime, allegedly because such reference would have "honored" it unduly, differing in this respect not only from the French constitution of 1946 which refers to "the régimes which attempted to enslave and degrade the human person," but also from several of the *Land* constitutions. The preamble's passing reference to the transitional nature of the Basic Law is reinforced by the very last article (146), which proclaims, quite unnecessarily, that this Basic Law "shall become invalid on the day when a constitution comes into force which was adopted by the German people in a free decision." With this article, the draftsmen at Bonn served notice upon the occupying powers that true democratic legitimacy depends upon popular sovereignty, the self-determination of a free people.

The constitution is, broadly speaking, of the type envisaged in the instructions of the Allies to the German Minister Presidents.[3] Clearly, it is democratic and guarantees civil liberties. It is also definitely the constitution of a federal state, as that term is customarily understood in political theory and comparative government. The new state is more federal than Austria and Canada, about as federal as Switzerland and the United States, less federal than the German Empire and the British Commonwealth of Nations. This fact is at times obscured by arguments as to whether it is federalistic enough. Certain imprecisions in the draft which have now been clarified caused concern in France, especially in

[2] This translation is based upon the official German text; it deviates slightly from the "agreed" translation of the occupying authorities. Legally, the German text will be "official," in accordance with international custom, just as (one assumes) the English and French texts of the Occupation Statute will be "official."

[3] The official text entitled *Grundgesetz für die Bundesrepublik Deutschland beschlossen vom Parlamentarischen Rat in Bonn am 8 Mai 1949*, Bonner Universitaets-Buchdruckerei (571 V. 49), has been used throughout. The "official" translation in "agreed text" has been compared, but from time to time it has seemed necessary to deviate from this translation. The Draft Basic Law as adopted by the Main Committee of the Parliamentary Council in December, 1948, was published together with an English translation by Civil Administration Division, OMGUS, on January 15, 1949; it contains also very valuable references to German party positions, tripartite agreements and disagreements, and corresponding provisions of the Weimar constitution. For the *Land* constitutions, the most authoritative source is a document prepared also by CAD, OMGUS, entitled *Constitutions of the German Laender* (1947).

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connection with the extent of legislative authority granted to the federation. In passing, a few words should be said about the use of the word "federation" to translate the German *Bund* when it occurs in such combinations as *Bundesgesetzgebung*. This is the terminology of the "official" translation. Actually, this usage is rather misleading. The Basic Law speaks in its title of a *Bundesrepublik*, or Federal Republic, and the prefix *Bundes-* means, therefore, "federal" rather than "federational."[4] Where a noun is needed, the word *union* in the American sense would seem more appropriate. But that word, just as much as federation, has at times been used to designate a league, rather than a federally united people, such as Lincoln implied when he said that the Union must be preserved. There is a certain fluidity in all these terms, and as long as the facts are understood, the terms do not matter too much. We shall here simply use *Bund* and federal and recommend that usage, in analogy to *Land*. The fact is that the Basic Law established, and the Allies accepted, a "federally united people" in the sense that the German people are united, but are composed of the peoples of the several states, Baden, Bavaria, etc., as enumerated in the preamble.

Finally, the constitution organizes a parliamentary government of the French type, with significant modifications derived from British practice, more especially the right of the Chancellor (Prime Minister) to propose dissolution of the representative assembly to the president. This watered-down power of dissolution is balanced by restrictions upon the Parliament's power to overthrow the government; it can do so only by electing a new Chancellor. It is strange that the Germans should thus have returned to a system of parliamentary government which experience has shown not only in Germany, but in France and elsewhere, to be a feeble form of democratic government, compared to the American, Swiss, and British systems. For various reasons, these other systems were considered unacceptable, although they had partisans in the constitutional assembly.

III. BASIC RIGHTS AND CIVIL LIBERTIES

The constitution clearly guarantees civil liberties. Not only does it contain a bill of rights, but a number of these rights are stated in firmer language than was the case in the Weimar constitution. To enhance the importance of these rights, they are placed at the beginning of the Basic Law. To preclude all arguments used in the past concerning the "purely declaratory nature" of such rights, Art. 1 states that these

[4] For these terms, see my *Constitutional Government and Democracy* (1941), Chap. XI, and the literature cited there at length.

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rights, being in themselves valid law, "bind legislation, administration, and the courts." This general proposition is implemented by the essential institutional safeguard—a constitutional court. Like Italy and Austria, both likewise countries with experience of dictatorship, Germany now is breaking with the tradition of a "supreme" legislature and giving broad powers of judicial review of such legislation to a judicial body (Art. 93). However, the procedure is not clear from the Basic Law, any more than it is in the Italian constitution.[5] Much will therefore depend upon the implementing legislation. Considering the complications which have arisen in the *Laender* of the American Zone over such legislation, it seems doubtful whether the individual citizen will be given the right to challenge the constitutionality of a law before this court, unless he can persuade the lower court of the merit of his case.

All of the basic rights and liberties (*Grundrechte*) are derived from the fundamental statement that (1) the dignity of man is inviolable and (2) the German people *therefore* acknowledge inviolable and inalienable rights of man to be the basis of every human community, of peace, and of justice in the world. Man is thereby put above the state, and all state authorities are specifically enjoined to respect and to protect the dignity of man.[6] From this recognition of the dignity of man flows the assertion of every man's right to develop his personality freely, as long as he does not interfere with the corresponding right of others. This doctrine was the central core of Immanuel Kant's constitutional liberalism; it is fortunate, indeed, that the Germans have come to recognize his views not only on the inalienable rights of the free personality as expressed in the categorical imperative, but also his application of that imperative in the moral law that "there shall not be war."[7] From this right there directly flows the right to be secure in one's person (Art. 2). Making earnest of this right, the basic law abolishes the death penalty (Art. 102).

The remainder of the "bill of rights" follows familiar patterns, but with some rather striking innovations. Equality before the law, equality of the sexes, no discrimination because of race, language, or religion, or even religious or political convictions, freedom of religion and conscience, including protection against being drafted for military service (!), freedom of expression through speech, writing, and printing (no censorship !), freedom of scholarship, art, and science, freedom of education

[5] For the Italian constitution, see Mario Einaudi, "The Constitution of the Italian Republic," in this REVIEW, Vol. 42, pp. 661–676.

[6] A remarkable study of this idea was presented recently by Herschel Baker in *The Dignity of Man* (1947).

[7] See for this my *Inevitable Peace* (1948), passim.

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for one's children, freedom of assembly and of association, freedom of movement, freedom of occupation and work, and no forced labor, no searches and seizures, no expropriation except for the common welfare and with compensation, no expatriation, and finally, the right of asylum, the right of petition, and of complaint. It will be noted that the right of property is severely circumscribed; it should be added that one article (15) further provides positively for socialization (community property —*Gemeineigentum* is the German term) of real estate, natural resources, and means of production with compensation; and concerning such compensation appeal lies to the courts.

The German constitution-makers show deep concern for the possible abuse of these basic rights by enemies of the constitutional order. The totalitarian movements everywhere have taken advantage of these civil liberties, expecially freedom of speech, of the press, of assembly and association, and of academic freedom. As a result, and following the precedent of the state constitutions, Art. 18 provides for the suspension of these rights for those who abuse them for the purpose of fighting the free democratic basic order (constitution). The rights mentioned, as well as freedom from censorship of the mails and telephone communications, private property, and the right of asylum, are thus suspendable. It seems very risky to provide thus broadly for the infringement of the "inalienable" and "inviolable" rights. Who decides what actions constitute the vaguely hinted-at offense of "fighting" the established order? What constitutes such an "abuse"? Experience in older constitutional systems makes one feel deep apprehension over this kind of provision. It is to be hoped that its general intent (which is sound) will be spelled out with the greatest care in forthcoming legislation as soon as possible.

These articles enabling the Constitutional Court to decree the suspension of "inalienable" rights are reinforced by specific criminal law embodied in Art. 143, to be superseded by more detailed legislation. According to this article, anyone who advocates the use of violence or the threat of such use for the change of the constitutional order of the *Bund* or of one of the *Laender*, or similar actions against the federal president, will be punished by imprisonment up to ten years, and anyone actually engaging in these forms of violence is subject to imprisonment for not less than ten years, and usually life. It is clear that these provisions are intended to nip in the bud any totalitarian movements that try to address themselves to the electorate with an appeal for a change of the system. So far so good. But the phrasing is so vague, as far as advocacy, agreement, and conspiracy are concerned, that this article, in combination with the language of Art. 18, must be viewed with

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apprehension. It is interesting, however, that such constitutional provisions were set down at all, considering the long-drawn-out struggle over the *Republikschutzgesetz* under the Weimar Republic, which became a major battleground of reactionary forces.

In some ways, these rather clumsy efforts to deal with the enemies of the constitutional order are compensated for by provisions seeking to protect the bill of rights against legislative encroachment. In Art. 19 we find the principle enunciated that the "essential core" of a basic right may not be "violated,"[8] a provision already found in some of the *Land* constitutions. It will be remembered that the Weimar constitution stated with reference to almost every one of the "rights" that it could be "interpreted" or "provided for" or in some other way changed by "legislation." The resulting confusion as to the proper rôle of legislation caused some "rights" to be all but legislatively obliterated. This the new article seeks to prevent.

IV. THE NEW PATTERN OF FEDERALISM

On paper, the new pattern of federalism resembles that of the Weimar Republic. Two sections, Arts. 20–37 and 50–53, are specifically devoted to the problems of the new pattern, but other provisions are scattered throughout the basic law. Thus the crucial issues of legislative jurisdiction or competence are handled in Arts. 70–75, followed by a number of articles regarding the share of the *Laender* representatives in federal legislation. Again, the no less critical question of the division of fiscal authority between *Bund* and *Laender* is laid out in Arts. 105–109, once more followed by provisions about the *Laender* representatives' part in federal authority in the fiscal field. Some vital matters are handled in the transitional articles, e.g., that occupation costs are paid for by the *Bund* (Art. 120). However, all these paper provisions are overshadowed, as far as the future of German federalism is concerned, by the abolition of Prussia (confirmed at the Moscow Conference in March, 1947). It will be recalled that the Weimar Republic struggled with the problem throughout its stormy life[9] and almost succeeded in resolving it. The task was a difficult one, because, contrary to the general impression, Prussia under the Weimar Republic was the mainstay of Republican and democratic forces. Still, Prussia's actual disappearance resolves some of the most perplexing issues which beset Weimar's federalism. The new

[8] The "official" translation obscures the meaning by calling *Wesensgehalt* "basic content," and rendering *angetasted* as "affected." One suspects that the translator did not realize the historical background of this article.

[9] See Arnold Brecht, *Federalism and Regionalism in Germany—The Division of Prussia* (1945) and the documents cited.

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federal system is composed of eleven states which do not differ in size nearly as much as either the American states or the Swiss cantons. The smallest, Bremen, has about 750,000 inhabitants; the largest, North-Rhine-Westphalia about ten million. The gradation is a fairly even one, and the party composition not too divergent. Should the *Laender* of the Soviet Zone be added, this picture would not be basically altered; for those *Laender* fit into the middle range. Art. 29 envisages an extensive revamping of *Land* boundaries in the light of regional (tribal) bonds, historical and cultural connections, economic utility, and social structure. But the Military Governors, in their Letter of Approval, served notice that with a minor exception "these powers shall not be exercised unless the High Commissioners unanimously agree to change this position." By this statement hangs a long story, going back to the London Conference, as previously described. In this writer's opinion, the High Commissioners could just as well agree—it will take the Germans a considerable time to arrive at any agreement among themselves.

Fundamentally, *Bund* and *Laender* are recognized as each autonomous in its sphere (e.g., Art. 30, and 109 *re* finances). Even though "federal law breaks *Land* law" (Art. 31 as modified by Art. 141), all legislative authority not specifically granted to the *Bund* is vested in the *Laender* (Art. 70), and the *Laender* have the right to conclude international treaties in those fields to which their legislative authority extends. Actually, the basic law distinguishes between exclusive and concurrent legislation. In the latter fields—and the list is a long one—the *Bund* can legislate only (1) if the matter cannot be regulated effectively by *Land* legislation, or (2) if the regulation by one *Land* could damage other *Laender*, or (3) if the preservation of the legal and economic unity of the country so requires (Art. 72). The last-mentioned clause had been the subject of sharp conflict between the Allies and the Germans, and the Military Governors therefore reminded the Germans of a compromise formula interpreting this provision as meaning that such legislation would "promote the economic interests of the *Bund* or insure reasonable equality of economic opportunity to all persons." The exclusive field is quite limited: foreign affairs, citizenship, passports, immigration and emigration, extradition, currency, coins, measures, customs and foreign trade, including international payments, railroads and air transport, posts, telephone and telegraph, federal officials and employees, trade marks and copyright, coöperation with the *Laender* in criminal police matters, protection of the constitution, international vice control, and federal statistics. There is no point in reciting at length the numerous matters subject to concurrent legislation; they range all the

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way from civil law to mountain railways, but include many of the crucial economic fields.

Structurally, the important fact is that the Basic Law retains the German tradition of a council type of governmental representatives for *Land* participation in federal legislation and administration—now to be called the Federal Council (*Bundesrat*). It is to be noted that this organization pattern has been put through by the more federalistic elements, while the more centralist wanted a senate of popularly elected representatives of the *Laender*. Each *Land* has three votes, those with more than two million inhabitants four, those with more than six, five. The votes of each *Land* have to be cast together, like votes in an international assembly. This body of officials—for that is what these councils traditionally are in Germany—has in ordinary legislation only delaying powers, but must consent by two-thirds to constitutional amendments. Its power generally is greater where rights of the *Laender* are involved.

The *Laender* are also participants in the election of the president, for which a special convention is envisaged, composed of representatives of each *Land* elected by its parliament—the total to equal that of the federal parliament. But it is best to discuss these arrangements in connection with the federal government.

V. THE FEDERAL LEGISLATURE

The center of the federal system is the Federal Diet (*Bundestag*). The Basic Law fortunately avoids the Weimar error of decreeing full proportional representation. The election law adopted by the Parliamentary Council after quite a struggle with the military governors, who wanted to have the matter left to the *Laender*, is a novel compound of P.R. and majority representation. Three-fifths of the seats, apportioned among the *Laender*, are to be filled through elections in single-member constituencies, the remainder by figuring the same votes proportionally and applying them to *Land* lists. At present, it is anybody's guess how this mongrel system will work; it is to be feared, however, that it will neither give a clear-cut majority, which is the virtue of the majority system, nor "reflect justly" the distribution of political sentiment among the electorate, which is the virtue of P.R.

The general provisions of the Basic Law concerning Parliament are in line with established European practice. The Diet (*Bundestag*) is elected for four years. It may be of interest that it calls for a Permanent Committee to guard the rights of Parliament between election periods. This Committee presumably will sit during recess periods. It cannot legislate, elect a new chancellor, or impeach the president, but has the

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right to investigate. An interesting limit is put on the deputy's immunity: he may be prosecuted and sued for "slanderous libel." This again represents the result of experience with anti-democratic forces; immunity of deputies had been extensively abused by slanderous attacks upon responsible leaders by Fascists and Communists alike.

It is not clear from the Basic Law whether or not the Federal Council (*Bundesrat*) representing the *Laender* is to be considered a part of Parliament. Art. 50 says that through this Council the *Laender* "participate" in legislation and administration of the *Bund*. Since it is composed of administrative officials, or members of the government, it seems more nearly in keeping with past German tradition to say that the Council is not part of Parliament. It represents the people of the several *Laender* indirectly, of course, since the *Land* governments are themselves responsible to popularly elected parliaments; but experience suggests that popular control which is that indirect becomes rather feeble. The Federal Council has particularly important functions in connection with fiscal matters, where its consent is required in concurrent legislation regarding taxes; it likewise has an important share in federal administration, e.g., in the matter of general administrative ordinances (*Verwaltungsvorschriften*), for which the Council's consent is also required. We have already noted its rôle in connection with constitutional amendments and *Land* boundary changes.

VI. THE FEDERAL PRESIDENT, CHANCELLOR, AND CABINET

Probably the most important lesson of the Weimar constitution's failure was a recognition of the dangers of a dualism between a popularly elected president and a Chancellor and cabinet responsible to Parliament. In his time, Hugo Preuss was very proud of this new scheme; but the framers of the Basic Law have abandoned such dualism for the French system in which the President is elected by Parliament (enlarged as noted above into a "convention"), the President is decidedly weak, and the Chancellor is the actual leader and dominates the government. For the framers also opted for the British prime-minister-led cabinet against the French tradition of a loose cabinet presided over by a chairman.

The President is elected for five years, and therefore overlaps the period of the parliament's effective life. The participation of the *Laender* parliaments not only stresses his heading a *federal* system, but also perhaps justifies the disregarding of the *Bundestag's* four-year life-span in determining the President's term. The fact that the President heads a "federation" is further stressed by the provision that his deputy shall

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be the presiding officer of the Federal Council and elected by that body.

Except for three matters connected with a change of government, the President cannot act except with the countersignature of the Chancellor. In short, his position is that of a constitutional king, such as the British. He represents the *Bund* in international law, in the appointment of high functionaries, and in clemency matters; and he may be impeached by both Diet and Council.

The Continental term *Regierung* is hard to translate; it is the "government" in the restricted sense of the British when they apply it to the cabinet. Art. 62 says that the *Regierung* "consists" of the Chancellor and the ministers. This cabinet or government is created by the election of a Chancellor by the Diet, without debate, upon nomination by the President. If the nominee fails of election, the Diet may, after two weeks, proceed to elect a Chancellor who then must be appointed by the President. It is obvious that the President, in making his nomination, will be guided by the party composition of the Diet. If one party has a majority, its leader will presumably be the man nominated and elected. Thus a straight parliamentary system of the British type could emerge, provided the election system works to produce a clear decision of the electorate. The ministers composing the cabinet are appointed by the President upon nomination of the Chancellor. If the Chancellor is the leader of a solid majority, he will presumably proceed to gather his party co-leaders around him. If no such majority exists, the chancellor-to-be will have to try to build a coalition. In that case, he will probably feel compelled to present his cabinet at the time his election is before the Diet. This will mean the French rather than the British system; it is a matter which will turn upon the working of the electoral law.

VII. LACK OF CONFIDENCE AND DISSOLUTION

The crucial problem in any parliamentary system is how the power of parliament and government or cabinet are balanced against each other. Students of government have long admired the subtle and supple British system. The Germans have evidently tried to achieve as near a copy of this as is possible without an hereditary head of state, without a majority system of elections, and without an electorate with the political know-how of the British. How nearly they have succeeded, only experience will reveal. But the Basic Law does provide for the cabinet's responsibility to Parliament in the traditional sense. That is, the Diet may overthrow the cabinet by a majority vote. However, in order to protect the government and the people against irresponsible extremists who might combine, as they did under Weimar, to vote the cabinet out of office without any idea of uniting on a new cabinet, the Basic Law

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makes such an overthrow of the existing government depend upon the election of a next Chancellor. In other words, the vote of lack of confidence does not in itself destroy the government's position. A similar arrangement, provided for under the constitution of Wuerttemberg-Baden (Art. 73) since 1946, has enabled the cabinet, though a coalition affair, to weather all parliamentary crises. The Suabians are proud of their constitutional tradition; unlike the Bavarians or the Prussians, they feel that constitutionalism, if not democracy, is native to their soil (as do the Rhinelanders and the Hanse cities of Hamburg and Bremen). It is striking how many resemblances there are between the Basic Law and the constitution of Wuerttemberg-Baden.

Since, on the other hand, repeated votes of lack of confidence could stall the cabinet and prevent it from carrying on effectively, the Chancellor is given the power to dissolve the Diet, or rather he is given the right to ask the President to do so. The Diet may then counter by electing a new Chancellor; but unless it does so, the dissolution stands. It does not seem clear from the text what would happen if the President were to refuse to dissolve the Diet. One would hope that a man of discretion and good sense would follow the advice of the Chancellor and proceed to dissolve. But the mind naturally wanders back to Hindenburg's presidency and one wonders. The only, and perhaps a very important, safeguard is the intrinsic weakness of the President's office; he would gain little, since he would have to go on working with the Chancellor actually in office, unless he could induce the Diet to elect a new one.

VIII. LEGISLATION, ADMINISTRATION, COURTS

Forty-five articles are devoted to more detailed basic provisions concerning the three great functions of modern government. There is not space here to explore the many interesting issues which these provisions raise and seek to settle. We shall merely indicate some major issues, in addition to the ones already discussed in previous paragraphs. Of these, two are of primary importance: the system of delegated administration and the fiscal pattern. Besides these, police and one or two other matters deserve a word of comment.

Students of German, as well as Swiss, federalism are familiar with a system known as delegated administration (*Auftragsverwaltung*), under which the *Laender* act as administrative agents for the federal authorities in all but a limited number of fields. It was so under the Empire, and to a much more limited extent under Weimar. The great expansion of federal administrative activities (*reichseigene Verwaltung*) under Weimar aroused the marked antagonism of proponents of *Land* autonomy, and

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all federalistically inclined elements, especially the Christian Democratic Union, desired the reëstablishment of delegated administration as an important insurance of the federal structure of the *Bund*. If one recalls that this is quite necessarily the arrangement in a league or confederation such as UN, he can readily see why federalistic elements take this view.[10] Art. 83 creates a presumption in favor of such delegated administration; it adds that the *Laender* execute the federal laws "as their own concern" (*als eigne Angelegenheit*). Military government authorities were not entirely happy about this revival of a technique which seemed to subject the *Land* governments to extensive supervision by the *Bund*, especially the provision of Art. 84(5) that by special legislative authorization the *Bund* government may give specific orders (*Einzelanweisungen*) to the *Laender* regarding the execution of federal laws. The Military Governors noted this provision, as well as one in Art. 87(3) which confers upon the *Bund* authority to establish further federally controlled field administrations, and observed that "the High Commissioners will have to give careful consideration to the exercise of such powers." The bugbear, expecially on the part of France, is "excessive concentration of power." However, the Allies will have to make up their mind as to which they favor; they cannot object to both delegation of administrative authority and the establishment of federal administrations. German (and Swiss) sentiment in the matter is highlighted by the provision that officials from the different *Laender* will have to be used proportionally in the federal offices, and that in the different field offices there shall be employed citizens of the *Land* in which the field office is located (presumably one in each *Land*). These problems are familiar to Americans. The following fields are to be administered by federal authorities directly: foreign affairs, finance, railroads, posts, rivers, canals and shipping (within limits), and social insurance programs transcending *Land* boundaries. There will also be a federal bank of issue and currency. As far as police is concerned, it is primarily a *Land* prerogative, except as pertaining to the protection of the constitution and *Bund*-wide federal criminal police, including information and communication. The further provision that the *Bund* can call out the police forces of several *Laender* to cope with insurrectionary dangers was protested by the Military Governors, who claimed the right of specifically approving such action. This is in line

[10] See Gerhardt Anschütz, *Die Verfassung des Deutschen Reichs* (4th ed., 1932), pp. 109 ff., concerning Arts. 14 and 15 of the Weimar constitution and the extensive literature cited, esp. Hans Peters, "Reichsauftragsangelegenheiten," in *Reich und Länder* (1929). For the general problem, see my *Constitutional Government and Democracy* (1941), Chap. XI, where the Swiss practice is briefly discussed also.

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with their general concept of themselves as guardians of the constitutional order.

Courts and judges are of vital importance for constitutional government, i.e., government under law. We have already noted the proposed establishment of a Constitutional Court; besides this, the Basic Law also establishes a Supreme Federal Court concerned with maintaining the "unity of the legal order." It is characteristic of European jurisprudence that this function could be seen as separate and distinct from that of interpreting the constitution. The Basic Law fails to make clear how this Supreme Court and the Constitutional Court are to be coördinated; the statutes organizing these courts will have to give careful attention to the problem. One might wish that the draftsmen had not seen fit to revive the Continental tradition of making judges the subordinates of the ministers of justice. Certainly the Justices' case in Nuremberg made evident some of the evil consequences of this arrangement; and the new French constitution, in the light of similar experiences, has organized a Superior Council of the Judiciary.[11] The general declaration of the Basic Law's Art. 97 that "the judges are independent and only subject to the law" cannot be considered adequate in the light of past German experience.[12] The Military Governors' warnings were, however, of little avail. On the other hand, it is gratifying that Art. 104 develops a fairly tight judicial control of the *habeas corpus* type, going much farther than Weimar. The latter still took for granted the traditional system of law-enforcement developed by liberal jurists during the nineteenth century. Experiences under the dictatorship make it seem advisable to secure these basic safeguards through explicit constitutional provisions.

Perhaps the thorniest problem of the Bonn Assembly was the distribution of fiscal authority. The Allies, too, were rather sharply divided on the subject. The final compromise was, however, satisfactory to them, and drew no further reservations. The basic principle is enunciated in Art. 109: *Bund* and *Laender* are autonomous and independent of each other in their fiscal economy (*Haushaltswirtschaft*). This principle is so obvious to Americans that they find it hard to believe that

[11] Constitution of November 10, 1946, Arts. 83–84. Cf. Gordon Wright, *The Reshaping of French Democracy* (1948), pp. 200–201, 236, 239–240, and elsewhere.

[12] One does not have to go as far as Martin Beradt, *Der Deutsche Richter* (1930), or the Communist Bertold Brecht, *Furcht und Elend des Dritten Reiches* (1945), in order to appreciate these problems. The Justices' Case was skillfully analyzed by its American prosecutor, Mr. Charles M. LaFollette, in five issues of the U. S. Military Government's *Information Bulletin*, Nos. 138–142 (1948). Cf. also Chaps. VI and XII of the author's *op. cit.* for the general problem.

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months of bitter conflict elapsed while the "centralists" argued for *Bund* control and "federalists" insisted on *Land* control. The writer predicted more than a year ago to the embattled contestants that they would come out at this point, but neither was willing to concede it.

Space does not permit even an outline of the fiscal pattern; broadly speaking, it corresponds to the general legislative and administrative pattern. The *Bund* has some exclusive legislative authority, namely, over customs duties and fiscal monopolies; it has concurrent legislative authority over, *inter alia*, the vital tax resources of modern government: income, estate, gift, and inheritance. Where the revenue resulting from these tax laws goes, is regulated in another article. The ultimate distribution is to be determined by the end of 1952; it is extremely difficult at the present time to anticipate needs, because of the very large share of revenues going to the occupying authorities.[13] Specific provision is made also for the equalization of tax burdens (*Finanzausgleich*) by authorizing the *Bund* to make grants-in-aid (*Zuschuesse*); but unlike the American practice, these grants may be for general purposes. As an ultimate check on expenditures, the Germans have retained their tradition of a judicial body, the Court of Accounts.

IX. ADOPTION AND AMENDMENT OF THE CONSTITUTION

It is fair to say that the Basic Law, in spite of its provisional character, displays a greater awareness of the importance of such a fundamental law than did the Weimar constitution. The federal element is expressed not only in the judicial protection for the constitution, but also in the provisions for its adoption and amendment. To be sure, these were prescribed by the Allies under the London Agreement. Still, it is important that the constitution had to be adopted in two-thirds of the *Laender*, and only to be regretted that no referendum was held, as especially General Clay desired. The German politicians were afraid that such a referendum would provide too golden an opportunity to Communist and Fascist elements. Therefore, Article 144 required adoption by the *Land* parliaments. All but Bavaria acted favorably, and by large majorities. This is important because of the claim that this Basic Law is a provisional constitution for all of Germany, including the Soviet Zone and Berlin. For of the roughly sixty-five million Germans which the 1946 census counted, all but about twenty million were located in the Western Zones; and of Berlin's over three million, nearly two and one-half

[13] The fiscal experts at Chiemsee estimated that in 1948 the largest possible revenue to be secured for the *Bund* would be around eight billion DM, and that occupation costs were running about seven. Without accepting these figures, one can take them as indicating the range of the difficulty.

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should be added to these forty-five million. (The population increase since has, if anything, favored the Western Zones.) If, therefore, sixty-five per cent of the Western Zones' representatives voted for the constitution, as indeed they did, more than an absolute majority of the German people can be said to have approved it. This fact justifies the Basic Law in claiming in its preamble that it represents those Germans who were prevented from participating, and in treating the accession of the *Laender* of the Eastern Zone and Berlin as merely a matter of time. In fact, the Bonn Assembly wanted to include Berlin now; but the Military Governors were obliged to request that Berlin be not granted voting membership in Diet and Council—although the city may send representatives without voting rights to attend these bodies.

Art. 79 makes it obligatory for the Diet and the Council to amend specifically and *expressis verbis* the Basic Law, and establishes the requirement of a two-thirds majority in both bodies. What is more surprising, the Basic Law, in spite of its "provisional" nature, goes beyond most modern constitutions by withdrawing from such amendments three vital matters: (1) the principles of the basic rights; (2) the participation of the *Laender* in legislation; and (3) the federal organization of the *Bund* into *Laender*. This is not the place to discuss the portent of such restrictions, or whether they can be maintained. Like the equal representation clause in the American constitution, the clause forbidding amendments of these clauses would seem to be itself subject to amendment. But of course the occupying powers are not likely to consent to such a move for some time to come.

These reflections raise the query of what the Basic Law and the constitutional order it purports to organize will look like ten years from now. Will the Basic Law have been converted into a full-blown constitution, after a peace treaty or like instrument has returned autonomy to the German people? Or will it still be the actual basic law, according to the French saying that "rien ne persiste que le provisoire?" Or again will the Basic Law have been swept into the discard by the rise of a Soviet-inspired totalitarian movement, converting Germany into a satellite of Moscow? In any case, will it turn out to have helped or hindered the reunification of what remains of Germany under the Potsdam settlement? These are the anxious queries which occur to anyone who seeks to assess the significance of this in many ways promising, and in other ways defective, latest instalment in the long history of European constitution-making. Certainly the circumstances attendant upon the Basic Law's birth are perhaps the strangest, the most unprecedented, that have ever ushered in a democratic constitution. It is to be hoped that

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it will prove durable, precisely because it is the creation of so sober, not to say disillusioned, a mood as prevails in Germany today. One of the leading German papers, *Die Zeit*, carried an article on May 19, 1949, which well expresses this mood:

"Paper is patient. Much more important than the paragraphs which describe political life is the spirit which animates it. The Bonn Basic Law is no work of creative imagination. But let us give to this law and those who will administer it a period of proving themselves. The law contains such fine things as the abolition of the death sentence and the readiness to join Europe, to share in collective security, and to renounce national rights of sovereignty in favor of an international order. The Basic Law is groping into the future. So is Germany. After many errors and disappointments, we are facing a beginning. How much new life will sprout from the ruins depends primarily upon ourselves."

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AMERICAN GOVERNMENT AND POLITICS

SOME NOTES ON PARTY MEMBERSHIP IN CONGRESS, III*

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II. DEMOCRATIC PARTY

By contrast with the numerous membership problems confronting the Republican party in Congress, the Democrats have had relatively little difficulty, whether because of a more harmonious party, a higher sense of party loyalty, a stricter party discipline, a more tolerant attitude toward party rebels, or for whatever reason.[99] The first case on record involved David Davis, that sturdy independent from Illinois, who was probably a member at one time or another of every political party that operated during his lifetime. After his election to the Senate in 1877, he was pointed out as the only Senator who did not attend either party caucus, and it was said that he "passed a rather lonesome hour on the floor of the Senate, in company with the door-keepers and pages, while the other Senators were talking politics to each other in well-guarded rooms."[100] The Democrats nevertheless considered Davis as one of their own number, or at any rate as one worth cultivating; and when in control of the Senate in 1881, they presented a committee slate with Davis as chairman of the Judiciary Committee. Davis thereupon made a statement in which he reviewed the circumstances of his election to the Senate, against his own desires, and through a coalition of Democrats and Independents in the Illinois legislature; indicated that "an honorable recognition" of this trust in him by the Democrats required him to support the Democratic organization of the Senate, but that beyond that he would not go; he most emphatically reasserted his complete independence of both parties, expressed his unwillingness to compromise himself by accepting any honor from either party, and therefore declined the chairmanship of the Judiciary Committee, although indicating his desire to serve as a member.[101]

* The first two instalments of this article appeared in the April and June issues. MAN. ED.

[99] The following letter from a Democratic Congressman from New York in 1834 suggests a lack of party discipline during the Jackson Administration: "I wish, my dear sir, that organization, according to the New York school, was a little more the order of the day here. Then something like concert of action could be secured upon party questions, and we should not meet with those defeats to which the want of organization constantly exposes us. At the commencement of the session of 1829, the administration had a majority in the lower house of about sixty, and yet, the friends of the president could hardly ever carry a question. You would be disgusted at the arrogance and magnificent air with which southern politicians claim an exemption from the shackles of party. They swell like frogs at the fountain when a party question is broached, and generally demonstrate their independence by voting with the opposition. How short would be the career of a New York politician who would thus misrepresent his constituents?" *Kinderhook* [N.Y.] *Herald*, reprinted in *Niles' Register*, vol. 45 (4th series, vol. 9), p. 394 (Feb. 8, 1834).

[100] *N. Y. Tribune*, Oct. 17, 1877, p. 1, c. 2.

[101] See text of Davis' statement in *Washington Star*, Mar. 11, 1881, p. 1, c. 6.

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Ten years later, the Senate Democrats had to consider what to do about the two Populist Senators, Peffer of Kansas and Kyle of South Dakota. Apparently an understanding had been reached by Democratic and Republican party leaders on a policy of containment with respect to these two Senators, the Republicans to take over Peffer and the Democrats Kyle, and thus reduce their potentiality as independent party men. This division seemed also to be in general accord with the preferences of the two Senators, at least so far as seating arrangements were concerned. Nevertheless, Peffer wrote to the chairman of the Democratic caucus (Cockrell of Missouri), asking for "considerate treatment, particularly in the matter of committee assignments"; while Kyle was reported to have sought committee assignments from both parties.[102] In the end, the assignments of both were made as originally planned,[103] but two years later (1893) both were given committee chairmanships as Democrats and generally affiliated with the Democrats on matters of both organization and policy.[104] In fact, the Senate Democrats seemed, on the whole, more tolerant of and more acceptable to the independents than did the Republicans.

During this same Populist period, the status of at least three members of the House (Bell and Pence of Colorado, and Harris of Kansas), elected as both Democrats and Populists, was considered a problem for the Democrats until all three settled the matter by declining to enter the Democratic caucus. Pence was described as "a Populist of Populists," and apparently did not take seriously the Democratic label which he also wore; Bell, however, explained his situation in these words: "I have never been anything but a Democrat, but I am a free silver man. My views differ so widely from those announced by various of my colleagues that I do not know that my presence in the caucus would be proper or of benefit to anyone . . . "; while Harris said: "I was elected by both Democrats and Populists. They will naturally expect me to remain unfettered."[104a]

In February, 1906, Senator Patterson (Colorado) supported the Dominican policy of President Theodore Roosevelt on the floor of the Senate, in opposition to the position of his Democratic colleagues, whereupon a Democratic caucus was called and adopted a formal resolution against the Dominican treaty and further "That if two-thirds of this caucus shall vote in favor of the foregoing resolution, it shall be the duty of every Democratic Senator to vote against the ratification of said treaty." Patterson defended his views before the caucus, but was curtly told by Senator Bailey (Texas), the Democratic leader, that he would challenge the right of any Senator to enter the caucus who did not abide by the caucus resolution. Patterson nevertheless persisted, and introduced a resolution in the Senate declaring that such attempt by a caucus to impose

[102] *Supra*, p. 315.

[103] *Washington Post*, Dec. 10, 1891, p. 1, c. 5; Dec. 15, 1891, p. 1, cc. 3–4.

[104] *Ibid.*, Mar. 15, 1893, p. 1, cc. 4–5.

[104a] *Washington Post*, Aug. 1, 1893, p. 2, c. 5; Aug. 2, 1893, p. 1, c. 3. Bell was reëlected several times as a Democrat, and Harris later served one term in the Senate (1897–1903) as a Democrat.

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party discipline "is in plain violation of the spirit and intent of the constitution of the United States."[105]

This resolution was not brought to a vote, but there was a hot debate on the floor of the Senate between Patterson and Bailey over the obligation to abide by a party caucus decision, during the course of which Patterson was forced to admit that he had himself previously voted in caucus for the binding rule,[106] an action which he now repudiated; and both Senators agreed that the effect of such a caucus resolution was not so much to prevent recalcitrant Senators from voting in the Senate in accordance with their convictions but rather to brand them before their colleagues and constituents as "bolters." "It is to that, Mr. President, I object," said Senator Patterson. "We know human nature well enough to realize that too many men, for the sake of holding a position that is so honorable, for the purpose of remaining in the body with which they hope their career in life shall be permanently connected, will, rather than be declared bolters, and thus retired to private life, submit their convictions to the command of other Senators. It is for that reason, Mr. President, that I say the caucus is cruel; that it is coercive; that it is indefensible." To which Senator Bailey retorted: "As I view it, the unity of a party is incomparably more important than the personal fortunes of any Senator. . . . This is merely a rule defining a Senator's duty as a Democrat. The Senator is at perfect liberty, whenever the importance of the question or the force of his convictions, or both, shall render it impossible to obey the caucus, to defy it, and to vote precisely as he would had no caucus action been taken. If he does defy it, he then settles with the Democratic people of his own State. If they agree with him, they return him; if they disagree with him, they may or may not defeat him. Thus the only effect of a caucus action is that it involves the personal fortunes of a Senator. My own opinion is that it is taking an unfair advantage of the Democratic party to call upon its members in the various States to choose members of the legislature, who, in their turn, and under the operation of a caucus rule, choose a Senator, thus giving him the benefit of the party organization, the fruit of the party victory, and then, when elected to the highest legislative assembly in the world, for him to despise the rule that brought him to this exalted station and proclaim his independence of the party."[107] What happened later is not recorded, but Patterson became thenceforth essentially a party outlaw, and this may well have been the most important factor in his failure to be reëlected.

[105] Text of Patterson resolution (which includes the text of the Democratic caucus resolution), in *Cong. Record*, vol. 40, pp. 2053–2054 (59 Cong., 1 Sess., Feb. 5, 1906); see also *Washington Post*, Feb. 4, 6, 1906.

[106] "Resolved, That hereafter all members of the Senate Democratic caucus shall be bound to vote in accordance with its decisions, made by a two-thirds vote of all its members, on all questions except those involving a construction of the Constitution, or upon which a Senator has made pledges to his constituents or received instructions from the legislature of a State which he represents." Resolution adopted by Democratic Senate caucus, Dec. 15, 1903, by vote of 23–2; text in *Cong. Record*, vol. 40, p. 2218 (59 Cong., 1 Sess., Feb. 7, 1906).

[107] *Cong. Record*, vol. 40, pp. 2207–2219 (59 Cong., 1 Sess., Feb. 7, 1906).

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Three years later (1909), in the 61st Congress, the House Democrats agreed in caucus to support the Republican insurgents in their drive to reform the House rules, but Congressmen John J. Fitzgerald and Francis Burton Harrison, of New York, and about twenty other Democrats[107a] dissented with respect to certain features, including the proposal for a "committee of 15" (9 Republicans, of whom 4 were to be of the insurgent group, and 6 Democrats) to constitute the Committee on Rules and to propose a revision of the rules; these Democrats voted with the regular Republicans on the floor of the House, and helped save the day, in part, for the conservative group. At the same time, Speaker Cannon named some of these bolting Democrats to important House committees (Harrison and Broussard to the Committee on Ways and Means; Fitzgerald to the Committee on Rules), without consulting Champ Clark, the new minority leader in the House.[108] In at least two of these cases (Fitzgerald and Broussard), it was quite certain that Clark would not have recommended the appointments that were made by the Speaker, since those men differed radically from the Democratic party position on the rules and the tariff, respectively.

Since this situation involved both a breach of party discipline and suspicion of trading with the enemy, the House Democratic caucus, which had already adopted a resolution "that no Democrat should accept a committee assignment unless it had the approval of the Minority Leader,"[109] reconvened promptly to deal with the problem. Clark himself issued a statement in which he reviewed the Speaker's power to appoint committees, noted the more recent development of consultation with the Minority Leader in respect to the assignments of minority members, and then went on to say: "Now the Speaker resumes the power of appointing the majority and minority members on committees for the purpose of punishing me, because I had the courage to fight certain things that he wanted done. He has a perfect right to appoint the majority and minority members, and I am not complaining about it, but his efforts to punish me will be absolutely futile if his purpose is to swerve me from the line of conduct which I think is for the welfare of the Democratic party, and therefore of the country. Committee assignments do not make and break men in the House of Representatives. I had nothing whatever to do with the appointment of the committee on ways and means and the committee on rules, and I wouldn't have cared if he had put me on the tail-end of the committee

[107a] Among these were Broussard (La.), Conry (N. Y.), Fornes (N. Y.), Goldfogle (N. Y.), Howard (Ga.), Keliher (Mass.), Lindsay (N. Y.), Livingston (Ga.), McDermott (Ill.), and Peters (Mass.).

[108] Clark himself was appointed to both the Ways and Means and Rules Committees. Although the Speaker at that time had full authority to make all committee assignments, the practice had already developed under Speakers Reed and Henderson of consulting the Minority Leader about the minority assignments, and Cannon himself had even allowed the previous Minority Leader (John Sharp Williams) to make these appointments with only a few exceptions.

[109] Caucus held Mar. 15, 1909, in morning and evening sessions. *Washington Post*, Mar. 16, 1909, p. 1, c. 8.

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on ventilation and acoustics. Every man makes his own place in the House of Representatives. He didn't give me my place and he cannot take it away from me."[110]

Several of the bolting Democrats, including Fitzgerald, absented themselves from this caucus; Harrison attended and defended his actions in a vigorous speech, but also indicated that he had voted for the previous caucus resolution with respect to committee assignments, intended to stand by that resolution, and had already informed Clark that he would not accept his appointment to the Committee on Ways and Means unless Clark approved. The other Democrats appointed to that committee said that they would await the caucus action, and Underwood (Alabama), the next ranking minority member, said: "If Mr. Clark asks me to resign from the Committee on Ways and Means, my resignation will be at the Speaker's desk within two minutes." There was some effort in the caucus to read Mr. Fitzgerald out of the party then and there, but the caucus, after lengthy debate, provided instead for a committee of 15 "to frame rules for future caucuses, and at the same time determine what shall be done to Fitzgerald and with the committee assignments not approved by Champ Clark."[111]

At the caucus to which this so-called "spanking committee" reported, the six insurgents from Georgia were again conspicuously absent,[112] but most of the other Fitzgerald followers were present, including Fitzgerald himself, who participated in the debate and explained his position with respect to the rules.[113] The caucus, which lasted several hours, first adopted a set of caucus rules or scheme of government for the Democratic party in the House,[114] intended to define more clearly the rights and obligations of Democratic party membership, prevent such breaches of discipline as had just occurred, and thus promote unified and harmonious party action. The caucus then administered a thorough spanking to those Democrats who had in this instance departed from the party line, by adopting the following resolution:

"First—We deplore the action of those Democrats who supported the Fitzgerald plan of saving Cannonism. This action was in conflict with the caucus action of their party, in violation of its platform pledge, and, we believe, of overwhelming Democratic sentiment. The Democratic party in the House disavows their action, and disclaims all responsibility therefor.

"Second—Under the guise of giving the Democracy of the House representation on the rules committee and on the ways and means committee, Speaker Cannon appointed on the

[110] Statement issued Mar. 16, 1909. *Washington Post*, Mar. 17, 1909, p. 1, c. 8.

[111] Caucus held Mar. 16, 1909, reported in *Washington Post*, Mar. 17, 1909, p. 1, c. 8.

[112] "Whether they merely did not attend because they objected to listening to the unkind words which the Democratic leaders had to say about them, or whether they considered themselves outside the Democratic caucus for good was a question that caused considerable speculation."

[113] For a vigorous defense of the insurgent case, see statement by the Georgians issued Mar. 20, and statement by Harrison, Keliher, and Peters, issued Mar. 21, in *Washington Post*, Mar. 21, 1909, p. 6, c. 5; Mar. 22, 1909, p. 4, c. 3.

[114] This was the beginning of the more formal party organization in Congress. See *supra*, pp. 309–311.

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rules committee, as a Democratic member, the proponent of the Fitzgerald resolution, who is opposed to the Democracy of the House in its fight to reform the rules, and is in accord with the Speaker; he appointed on the ways and means committee, as a Democratic member, a gentleman known to be wholly opposed to any change in the Cannon rule.

"We condemn the false pretense of the Speaker, that in these appointments he has granted to the Democracy representation on the said committees and we hereby declare that in neither of these appointments is the Democracy of the House represented, and we decline to recognize such appointees as representatives of our party on said committees. This arbitrary and unjust conduct of the Speaker demonstrates anew the urgent need for a thorough and real revision of the rules, and a better spirit in their application, so as to curb the Speaker, protect the members, and free legislation and legislative procedure from bossism. The issue is too great to be confined within party lines. Of nation-wide importance, it challenges the consideration of every American voter whose neck is free from the collar of a boss, and whose back knows not the machine driver's lash."[115]

Apparently all of the bolters were nevertheless allowed to keep the committee posts to which they had been appointed; and two years later, when the Democrats were in the majority in the House, Fitzgerald again sought in caucus to persuade the Democrats to continue the Speaker in control of committee appointments.[116] This time, however, he accepted his defeat without carrying the fight further, loyally supported the Democratic organization, and, although removed from the Committee on Rules, became chairman of the Committee on Appropriations and one of the wheel-horses of the party in the House.

The difficulty of determining party membership by the election label is suggested by the case of Theron Akin, which came before the House Democrats in 1911. Akin had been elected to Congress in November, 1910, from the 25th New York district as a Democrat and Independent Republican, and his name was placed on the Democratic caucus roll. When the caucus met, on January 19, 1911, to organize the House, a letter from Akin was read, stating in effect that he considered himself to have been an independent or progressive Republican endorsed by the Democrats, that he intended to "sit with and in general vote with the Republicans", and therefore he requested the removal of his name from the Democratic roll. That was done without question,[117] the notable feature being that Akin, by his scrupulous conduct, deprived himself of good committee preferment, the Democrats then being in the majority.

Almost twenty years later (1928), when Southern Democrats in considerable number bolted the Presidental nominee of their party (Governor Smith), that bolt was led by two Southern Senators, Simmons of North Carolina and Heflin of Alabama. Efforts were made in the different states to punish these Hoovercrats, as the bolters were called, and some were read out of the party, or denied the right to be Democratic party candidates for office, or defeated for office by the rank and file of Democrats. In Congress, however, the Democratic organi-

[115] Caucus held Mar. 22, 1909, reported in *Washington Post*, Mar. 23, 1909, p. 1, c. 7. The members particularly censured in this resolution were Fitzgerald and presumably Harrison.

[116] Democratic House Caucus, Jan. 19, 1911, reported in *N. Y. Times*, Jan. 20, 1911, p. 1, c. 5.

[117] *N. Y. Times*, Jan. 20, 1911, p. 1, c. 5; *N. Y. World*, Jan. 20, 1911.

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zation did not in any way discipline the two senatorial ring-leaders, possibly because the minority status of the party made such discipline less important;[118] both were, however, shortly punished by their constituents by defeat at the polls.

Senator Rush D. Holt, of West Virginia, who was elected to the Senate in 1934, before he was old enough to take his seat, immediately became a problem child for his fellow-Democrats in the Senate, annoying them continuously by his youthful brashness and disregard for Senate and party traditions. In the campaign of 1936, he apparently had conferences with Governor Landon, the Republican Presidential nominee, and openly fought the reëlection of his Democratic colleague from West Virginia, Senator Neely, operating through the new Union party of Father Coughlin, Dr. Townsend, and William Lemke. This was considered a form of party treason, and shortly before the opening of the 75th Congress, Holt was formally notified by Senator Hayden (Arizona), the chairman of the Democratic Patronage Committee, that he might expect to be punished by being deprived of his Senate patronage (which was reported to consist of two policemen and one elevator operator). "It has become my duty to advise you," wrote Senator Hayden, "that when Congress convenes in January, you will in all probability be deprived of the patronage positions now assigned to you. From expressions made to me by Democratic senators, this action will be taken as a result of two facts: First, because you gave aid and comfort to those who were seeking to defeat the Democratic national ticket, and also opposed the election of a Democrat to the United States Senate. Second, because there are newly elected senators who wholeheartedly supported the Democratic party at the last election and who, therefore, have a sound claim to patronage positions among the attachés of the Senate. I am sending you this letter in order that your appointees may not be surprised when they are removed from the places they now occupy. I hope in the meantime they will be able to find other suitable positions." Holt commented, "I see that the era of good feeling has begun," appealed his case to the Democratic caucus, and also wrote a letter to several Democratic colleagues, essentially admitting the charges but charging in turn that Neely had previously opposed two Democratic Presidential nominees, John W. Davis in 1924 and Alfred E. Smith in 1928. The Democratic caucus, however, ignored the matter and thereby sustained its Patronage Committee.[119]

This understandably harsh attitude of the Senate Democrats toward their obstreperous party colleague became in the same 75th Congress one of sympathetic tolerance toward the party independents. Thus, Senator Lundeen (Minnesota), elected as a Farmer-Laborite, requested and was granted classification as a Democrat for the purpose of committee assignments, and in return Lun-

[118] See comment by Arthur Crawford, in *Chicago Tribune*, Nov. 9, 1928; for further analysis of the Hoovercrat problem outside Congress, see Clarence A. Berdahl, "Party Membership in the United States," in this REVIEW, vol. 36, esp. pp. 33–35 (Feb., 1942).

[119] *Chicago Tribune*, Dec. 27, 1936, Pt. 1, p. 9, cc. 1–2; *N. Y. Times*, Jan. 3, 1937, Sec. 2. p. 2N, c. 1.

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deen supported the Democrats on matters of Senate organization. Senators Norris (Nebraska) and LaFollette (Wisconsin), who had both supported Franklin D. Roosevelt for reëlection, and who both now formally abandoned the Republican label they had previously been wearing for that of "Independent" and "Progressive," respectively, continued, at their own desire and with the consent of the Republican leaders, to be given committee posts out of the Republican quota, and with their seniority completely maintained, although as third party men they might well have been dropped to the lowest places.[120]

In the 1942 elections, Congressman Vito Marcantonio, that stormy petrel of the House from New York City, secured an easy reëlection through having won the nomination, not only of his own American Labor party, but also of both the Democratic and Republican parties as well. In view of the fact that support by the American Labor party had saved several New York congressional seats for the Democrats,[121] the Democratic House leaders felt that some special recognition was due that party, and the Democratic Committee on Committees, by a vote of 9–6, recommended the assignment of Marcantonio to the important Judiciary Committee. This action caused a revolt in the caucus among the Democratic rank and file, particularly the Southern Democrats, who argued that Marcantonio was disqualified for preferred treatment by his record as an isolationist until the invasion of Russia, as a belligerent fighter for anti-lynching and anti-poll tax legislation, and as one disposed to obstructionist tactics in respect to any matter he opposed. It was pointed out also that "Mr. Marcantonio himself owes his election more to the Republicans than he does to the Democrats. . . . When the returns were in, he had more Republican votes to his credit than either of the two parties;" it was therefore felt that he did not deserve any special Democratic recognition.

The Democratic House caucus, after a heated session on January 19, 1943, rejected the Marcantonio assignment, and ordered his name sent back to the Committee on Committees (the Democratic members of the Committee on Ways and Means) for another assignment, which Marcantonio promptly announced he would not accept and which the Committee on Committees therefore did not make.[122] Marcantonio continued as the one Congressman without

[120] *Chicago Tribune*, Jan 3, 1937, Pt. 1, p. 7, c. 1; *N. Y. Times*, Jan. 7, 1937, p. 3, c. 4. Lundeen's assignment by the Democrats was also in accord with the custom that third party men were to be assigned within the majority quota; he had, however, been invited to attend the Republican caucus under the test of "political origin" set up by the Senate Republicans in 1936. *Supra*, pp. 505–506.

[121] This was clearly the case in respect to two seats (the 16th and one at large), and possibly the case in respect to six others (6th, 8th, 10th, 14th, 23rd, 24th), in which the ALP vote, if cast solidly for the Republican instead of the Democratic candidate, would have elected the Republican.

[122] See accounts by C. P. Trussell and Arthur Krock, in *N. Y. Times*, Jan. 20, 1943, p. 1, c. 2; p. 10, cc. 2–6. Two Southern conservative Democrats, Cox (Ga.) and Bulwinkle (N. C.), were reported to have supported the Marcantonio assignment, but only on the ground that they did not desire to upset the decision of the Committee on Committees. Drew Pearson, "Washington Merry-Go-Round," in *Washington Post*, Jan. 26, 1943, p. 14, cc. 1–2.

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a committee throughout the 78th Congress; but in the next (79th) Congress he was again recognized by the Democrats and assigned without protest to their last place on the Committee on Interstate and Foreign Commerce, this possibly because in the elections of 1944 the American Labor party carried New York for Roosevelt and Marcantonio himself now became statistically more of a Democrat than a Republican,[123] or because of the tradition that third-party members should be assigned out of the majority quota. In the 80th Congress, the Republicans, now in the majority, argued that Marcantonio should still be assigned as a Democrat, since in 1946 he had been elected with a Democratic label in addition to his regular American Labor party label, but this time without the Republican label at all. However, the Democrats held out against any such Democratic assignment on the ground that Marcantonio was not a Democrat but a third party man; and this the Republicans finally accepted in 1948, giving Marcantonio, after another fifteen months without a committee, the last majority (Republican) place on the Committee on House Administration.[124]

Various other incidents indicate occasional troublesome problems of party loyalty for the Democrats. For example, in December, 1937, a small group of Democratic and Republican Senators, lead by Senator Bailey (Democrat, of North Carolina), secretly prepared a ten-point program, which was issued as "AN ADDRESS TO THE PEOPLE OF THE UNITED STATES," and whose principal features were a balanced budget, tax revision so as to free funds for private investment, maintenance of states' rights and local self-government, and preservation of the American system of private enterprise. "Pledging ourselves to uphold these principles, we summon our fellow citizens, without regard to party, to join with us in advancing them as the only hope of permanent recovery and further progress. . . . " This movement, suspected of being an attempt to organize a coalition against the Roosevelt Administration, was opposed, not only by the ardent New Deal Democrats in the Senate, but also by the responsible leaders of both parties, the Democrats refusing to go along with anything that might seem to be a rebellion against the President and the Republicans being unwilling to join or encourage a coalition just when they were taking steps to revive their own party. The movement was defended, however, on the floor of the Senate by Senators Burke (Democrat, of Nebraska) and Bailey, the latter assuming the principal responsibility and making an elaborate explanation of the proce-

[123] The vote for Marcantonio in 1942 was: ALP—3,501; Dem.—7,553, Rep.—7,890; in 1944: ALP—13,543, Rep.—31,731, Dem.—37,042. *Cong. Directory*, 78 Cong., 2 Sess. (1st ed., Jan., 1944), p. 254; 79 Cong., 1 Sess. (2nd ed., Aug., 1945), p. 258.

[124] *N. Y. Times*, Mar. 30, 1948, p. 18, c. 3. Leo Isacson, elected as the Wallace candidate in a special election on Feb. 17, 1948, was also assigned to a committee (the Committee on Expenditures in the Executive Departments) out of the Republican quota, and without any quibbling, since he was elected only on the American Labor party ticket and was clearly a third party man. "The precedents are clear," said Speaker Martin. "We'll have to make a spot for him. The majority party must take care of the minority [third] party members." *N. Y. Times*, Feb. 20, 1948, p. 3, c. 6. See also *Cong. Directory* for committee assignments in the respective sessions.

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dure and purposes of the bipartisan group. He denied that it was "anything like a political maneuver or anything like a secret matter, or anything like the formation of a bloc or coalition, or anything like that damnable statement which was attached to the first publication, that it had come or might come from the Liberty League or that someone might say that the Liberty League had something to do with it. . . . But what I want and what the country demands is a united Congress—not a group of Republicans seeking advantage, not a group of New Dealers defending and apologizing, not a group of Socialists scheming to gain power, not a group of Democrats trying to see how they will win the next election; but a group of American Senators and Members of the House of Representatives who have a sense of responsibility to their circumstances and who are willing to unite in the common task of putting employment and business and industry in this country upon a firm foundation." The early publicity, which this group had tried to avoid, and the small number involved, made the movement ineffective and no disciplinary measures were thought necessary.[125]

In the 76th Congress, a more serious split developed among Democrats in the House over the Administration policy of continued New Deal legislation, and the party leaders found it increasingly difficult to keep their members on the floor and in line, while the Republicans showed exceptional unity in respect to program and strategy.[126] The result was that a coalition of the Republicans and dissident Democrats was effectively impeding and sabotaging the legislation favored by the large majority of Democrats, and a caucus was called to deal with the matter. At this meeting, held on February 14, 1939, the Democratic leaders, Speaker Bankhead, Floor Leader Rayburn, Mr. McCormack (Massachusetts), chairman of the caucus, and Mr. Drewry (Virginia), chairman of the Congressional Committee, treated the problem as one of absenteeism rather than as a split in the party, pleaded with the members to coöperate with the Administration, and threatened, if necessary, "to crack the whip to compel Democratic members to attend the sessions." A group of the more ardent Administration Democrats also met separately on the same day to press for vigorous action with respect to New Deal legislation, and decided "first, to see that more Democrats attended sessions of the House, and second, to keep them from 'going down the aisle behind the Republican leaders.' "[127]

[125] See account by Turner Catledge, in *N. Y. Times*, Dec. 16, 1937, p. 1, c. 8; p. 4, cc. 3–6 (text of declaration at p. 4); Dec. 17, 1937, p. 1, c. 6, p. 19, cc. 4–6; Dec. 21, 1937, p. 5, cc. 1–3; and *Cong. Record*, vol. 82 (75 Cong., 2 Sess., Dec. 20, 1937), pp. 1934–1940 (text of declaration at pp. 1937–1938). The signatures to the declaration were not published, but those who admitted or were known to have been included were: *Democrats:* Bailey (N. C.), Burke (Neb.), Byrd (Va.), Copeland (N. Y.), Tydings (Md.); *Republicans:* Austin (Vt.), Vandenberg (Mich.).

[126] "They [the Republicans] have obeyed almost to a man their whips' instructions, voting practically solidly on all important issues which might be embarrassing to the Administration or to the Democratic majority. They keep their members on the floor, prepared to thwart any parliamentary strategy the Democrats might spring at short notice." Harold B. Hinton, in *N. Y. Times*, Feb. 12, 1939, Sec. 1, p. 1, cc. 4–5, p. 41, cc. 3–4.

[127] *N. Y. Times*, Feb. 15, 1939, p. 1, c. 8, p. 8, cc. 3–5.

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These efforts to win over the anti-Administration Democrats by persuasion failed, however, and the coalition continued throughout the session. Finally, more than fifty loyal New Deal Democrats, led by Congressman McKeough of Illinois, petitioned for another caucus to deal with the problem. "It is the sense of the members signing the call for the caucus," said Mr. McKeough, "that no adjournment take place until this necessary legislation has been passed, or the responsibility for the failure so to pass is properly placed upon the reactionary coalition consisting of a small bloc of Democrats and practically the entire Republican membership of the House." The purpose clearly was to force through a binding resolution on the anti-Administration Democrats, something which the party leaders very much feared would produce "a party-splitting row."[128] However, at the caucus, held on July 28, 1939, a resolution was adopted "almost unanimously," which strongly, although indirectly, censured the Democrats who had joined the Republicans in opposing New Deal legislation, and formally pledged the party in the House to continued support of the Roosevelt program.[129] The seriousness of the revolt within the Democratic party during that session of Congress is further indicated by the statement of Congressman Patrick J. Boland (Pennsylvania), the Democratic House Whip, that he was contemplating the dismissal of seven of his sixteen Assistant Whips "because of their disloyalty to President Roosevelt, as evidenced by their opposition to the President's legislative program."[130]

[128] *Ibid.*, July 26, 1939, p. 10, c. 4.

[129] The caucus resolution was as follows:

"Whereas during the present session of the Seventy-sixth Congress the leadership of the Democratic party has been handicapped by a carping, critical reactionary Republican party, totally bereft of a constructive program, and

"Whereas responsibility for legislative action rests with the Democratic party and should not and cannot be avoided or delayed without grave danger and injury to the country and the party, and

"Whereas the President of the United States as the leader of the Democratic party has recommended to the Congress the social and economic necessity of the enactment of enabling legislation, and

"Whereas the progressive and constructive legislation of the Democratic party will be opposed by the reactionary members of the Republican party—which party, lest we forget, was responsible after twelve successive years of national leadership for the economic collapse under President Hoover, resulting in ten-cent corn, twenty-cent wheat, and five-cent cotton—industrial bankruptcy, complete collapse of the banking and credit structure, loss of savings, farms and homes and general business paralysis, with its attendant hunger and chaos,

"Be it resolved by the members of the Democratic party of the House of Representatives in caucus assembled that it is the sense of the caucus that we hereby pledge our continued support of and devotion to the great social and economic program as enunciated by the President of the United States, Franklin D. Roosevelt, to the end that the economic collapse of 1929, with its frightful social consequences, be remedied and removed and the general welfare of the people of the United States reëstablished." *Ibid.*, July 29, 1939, p. 1, cc. 6–7, p. 2, c. 3.

[130] Statement at Scranton, Pa., Aug. 21, 1939. *Ibid.*, Aug. 22, 1939, p. 2, c. 4. Mr. Boland did not name these disloyal members, and the record does not reveal any further action.

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During the war, the Democratic majority was able to maintain a fairly solid and united front in both houses, but with the end of the conflict and renewed emphasis on domestic policy, the coalition was restored on numerous important measures, particularly in the House, Republicans as well as Democrats bolting their regular party line. This revealed the rather meaningless pattern of our so-called two-party system, especially as it operates in Congress, and the situation attracted considerable comment. Arthur Krock, after examining the roll-calls in the House on housing and other matters in 1946, referred to "the looseness of the party lines as well as of the coalition" and said that "from the above figures it can be seen that the leadership on neither side can count on solid party support of its position when issues of a certain nature arise." He pointed out that "It takes a coalition to fight and overcome a coalition, and the Democratic party label as manufactured by President Roosevelt was stretched to cover a political alliance of groups, usually discordant, for the purpose of gaining and holding office and power. When this latter coalition has been asked as a party to follow certain courses and support specific items of the New Deal legislation, it falls apart, the most recent instance being the housing legislation endorsed by President Truman. But the group or groups that break away, in order to reduce to a minority the groups that do not, must combine with another minority to carry the day. This minority at the present time [1946] happens to be the Republican membership of the House. Thus one political coalition in Congress arises to combat another. Until the major parties are realigned, and two parties are formed in each of which there is a common set of political views and principles, these occasional combinations will appear in the House, as they also have in the Senate. There is both oil and water in the bottle that bears the label 'Democrats,' and attempts to mix them will be less and less successful as the catalyst of war disappears."[131]

This extraordinary looseness in party performance and at the same time the passionate attachment to party labels was also clearly revealed during the presidential campaign of 1948, when Governor Dewey, as the Republican Presidential candidate, felt obliged to urge strongly the election of Republican candidates for the Senate and House, even though those men were opposed to the Dewey policies and would presumably so vote in Congress. Walter Lippmann took notice of this situation, and pointed out that "the concrete issue remaining [in October, 1948] between Mr. Truman and Mr. Dewey is whether the Democrats or the Republicans are to 'organize' the Senate," and that in order to secure a "Republican" Senate Dewey was obliged to campaign for men who were actually his political opponents. "As a matter of fact," wrote Lippmann, "in most if not all of these uncertain States [Illinois, Iowa, Minnesota, New Mexico, Oklahoma, Tennessee, West Virginia, Wyoming] the Democratic candidates [for the Senate] are not only more attractive to independent and progressive voters but are, on the great issues, much closer to

[131] Arthur Krock, in *N. Y. Times*, Mar. 12, 1946, p. 24, c. 5.

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Governor Dewey, and more likely to support him. On the bipartisan foreign policy, on an enlightened domestic program, Mr. Dewey would in fact do better, and have less trouble, if Anderson were to defeat Hurley in New Mexico, if Kefauver defeats Reece in Tennessee, if Paul H. Douglas could defeat Brooks in Illinois, if Revercomb of West Virginia and Robertson of Wyoming and Wilson of Iowa were retired from the Senate. The odd and disconcerting fact about the situation is that in order to keep Senator Vandenberg as chairman of the Foreign Relations Committee, it is necessary for Governor Dewey, and indeed for independent voters, to work for the election of Republican Senators who have always opposed the measures which Vandenberg stands for. Is this not a foolish predicament?' [132]

Mr. Lippmann's solution for this predicament was that Democrats should agree beforehand to allow the Republicans to organize the Senate in case of a Dewey victory, and thus save Vandenberg's chairmanship (and all the other chairmanships as well) and give full responsibility for national policy to the Republican party. Even though this were practically possible (and Lippmann clearly did not expect it to happen), there may well be some doubt as to the usefulness, to either the country or the party, of nominal Republican control unless that control is also Republican in fact, and this again raises the question of what is meant by a Republican or Democrat or whatnot. A better solution of the predicament would therefore seem to be the development of a more genuine and meaningful party system, with fairly precise criteria of party membership, with more closely knit party organizations in Congress, with the House and Senate parties more closely tied together and both closely related to the respective national party organizations, with a keener sense of responsibility as a party, and with a better system of party discipline to keep members mindful of the party position on legislative problems and of their obligations as members of a responsible party group.[133] In some such way only can the two-

[132] Walter Lippmann, "Today and Tomorrow," in *Washington Post*, Oct. 18, 1948, p. 11. Marquis Childs also discussed the same problem by pointing to Dewey's plea in Missouri for the reëlection of Representative Dewey Short. "With his reëlection this year, Short will presumably be chairman of the House Armed Services Committee. That committee is likely to be vital to a Dewey program. Both before and after World War II, Short was by conviction or expediency a head-in-the-sand isolationist who opposed every move to strengthen America in a perilous world. In his speeches, Dewey cannot flout the Shorts, the Curley Brookses, the Harold Knutsons. They remember on the Dewey team what happened to Wendell Willkie when he flouted and ignored party organization. So the speeches are general and hopeful. Presumably the trial of strength and skill will come after the new administration is in the White House. The old liners are muttering in their beards, promising themselves that they will take care of this young man and what sounds suspiciously like his New Dealism when the time comes." Marquis Childs, in *ibid.*, Oct. 19, 1948, p. 12, c. 7.

[133] Henry Wallace, when Secretary of Commerce, urged that members of both parties in Congress should abide by their party platforms or get out of the party, and President Truman endorsed this plea for stricter party discipline of members who bolt the party line. *Chicago Sun*, Mar. 22, 1946, p. 3, cc. 4–5. For a well-reasoned statement against a rigid

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party system be restored to something like the meaningful system it is presumed to be, and become an effective instrument to reflect the will of the people, who presumably choose Republicans or Democrats to Congress, not solely to "organize" the respective houses, but primarily to enact Republican or Democratic policy.

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system of party discipline, see David Cushman Coyle, "Reorganizing Congress," in *Va. Quar. Rev.*, Winter, 1947, reprinted in *Cong. Record*, 80 Cong., 2 Sess. (Jan. 12, 1948), pp. A124–A127; and for a good analysis of the problem of party organization in respect to legislation, see Merle Fainsod, "Consolidating Party Control," in this REVIEW, vol. 42, pp. 316–326 (Apr., 1948). It may be noted also that a Committee on Political Parties of the American Political Science Association is now studying the entire subject of party responsibility.

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PUBLIC LAW

STATE CONSTITUTIONAL LAW IN 1948–49*

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The ever-increasing volume of litigation in state courts has made it necessary to exclude this year all decisions of courts other than those of last resort. In addition, with respect to subjects such as "police power" and "equal protection," where classification or analysis of the decisions would require space out of all proportion to their importance, only a listing of the subjects involved in the case is attempted. The cases fall generally into the pattern used last year.

I. GOVERNMENTAL ORGANIZATION

1. *Special Constitutional Provisions.* The effective date of a new constitutional amendment was the subject of two decisions this year. In one, the amendment extending the term of office of county attorneys from two to four years was approved at a general election in which county attorneys were elected. The court held that the officers elected then were elected for the longer term, even though the amendment by its own terms did not become operative until the January following the election.[1] This was so, even though the required local notice of the amendment omitted the effective date, since full state-wide notice was published by the secretary of state. The other case holds that the amendment becomes effective on the date of the canvass of votes rather than on the date of the election.[2] Here, too, there were irregularities in the published notice in that it was not published in all counties on the same days and minor inconsistencies appeared in the printed versions. The court held that the purpose of notice had been substantially served.[3]

Interpretation of the meaning of a constitutional amendment by reference to extrinsic evidence was discussed in an equal number of cases. An Idaho constitutional amendment lengthening the terms of all state elective officers was approved in 1944, but was challenged on the principal ground that the name of one officer appeared in the title and body of the legislative resolution as passed proposing the amendment, disappeared in the body of the official enrolled bill deposited with the secretary of state, and reappeared in the title and body of the published version which constituted notice. The court held that this was not a fatal infirmity.[4] It was said that this conclusion was sup-

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[1] Snow v. Keddington, 195 P (2nd) 234 (Utah, May, 1948).

[2] Opinion of the Justices, 36 So (2nd) 499 (Ala., July, 1948). See *contra*, Manning v. Davis, 201 P (2nd) 113 (Kan., Dec., 1948).

[3] See also Keenan v. Price, 195 P (2nd) 662 (Idaho, June, 1948). Hotard v. City of New Orleans, 35 So (2nd) 752 (La., Mar., 1948).

[4] Keenan v. Price, *supra*.

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ported by the fact that the court could go behind the enrolled bill to legislative records where in this case legislative intent was clear.[5] Further, the title to the amendment contained mention of this officer throughout all stages, and even though a title was not required, it could be resorted to for legislative intent. Finally, the published version, upon the basis of which the electorate voted, was consistent with what the court found to be the provision actually approved by the legislature. In another opinion, the court refused to consider such aids. A constitutional provision of 1877 provided for the election of state senators for four-year terms, to be staggered by electing one-half of them every two years. It was also provided that there should be an "entire new election" after every reapportionment. For twenty years, this was interpreted to mean that at the first elections after each reapportionment, one-half of the senators would run for two-year terms and one-half for four-year terms in order to reëstablish staggered terms. There is an implication in the opinion that this practice followed a legislative interpretation of the amendment. In any event, the court refused to be persuaded by any practice or interpretation contrary to what it considered to be the plain and obvious meaning of the words of the amendment, namely, that after reapportionment all candidates would run for four-year terms and the staggered-term feature would be abolished.[6] In Maryland, the court held that an amendment limiting elections of state and county governments to one in four years did not repeal the implied power of a county organized under the older home rule amendment to fix the time for holding special elections to fill vacant county offices.[7]

In Maine, a somewhat unique case arose involving the relation between the terms of successive amendments limiting the power to borrow money for highway purposes. This constitution contains several amendments limiting the power to borrow money for this purpose. Until 1925, the sole limit was on the amount; after that year, changes were made enlarging but still limiting the maximum debt and forbidding the reissuance of any such bonds retired. The state senate requested an advisory opinion on whether the prohibition against reissue applied to bonds issued prior to 1925 and still outstanding. While the reasoning is not clear, the court seems to hold that the privilege of reissue no longer exists with respect to any part of this debt because the latest amendment omits the statement contained in the 1925 amendment specifically permitting reissuance of bonds outstanding.[8] Consequently, a provision intended to prevent wasteful state financing results in preventing the state from taking advantage of reductions in interest rates.

The leading case in this group arose in California. A pension organization submitted an initiative amendment to the secretary of state for inclusion on

[5] To the same effect, Revels v. De Goyler, 33 So (2nd) 719 (Fla., Jan., 1948).

[6] Kernan v. Holm, 34 N.W. (2nd) 327 (Minn., Oct., 1948). See also Romans v. Aten, 35 N.W. (2nd) 701 (Mich., Feb., 1948).

[7] Co. Commrs v. Sup. of Elections, 63 A (2nd) 735 (Md., Jan., 1949).

[8] Opinion of the Justices, 60 A (2nd) 903 (Maine, Mar., 1948).

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the ballot. The measure consisted of some 208 subsections which would repeal or amend 15 of the 25 articles of the constitution. The proposed changes included, in addition to a pension scheme, increased salaries for teachers, legalization of gambling, repeal of the oleomargarine tax, compensation for volunteer workers in political campaigns, and a host of other unrelated things. The provisions governing submission of initiative amendments contain no limitations other than the procedural ones fulfilled here. But the court held that so vast a change could not be called an amendment, so that these limitations, or rather lack of them, did not apply.[9] Rather, this was a "revision" of the constitution which could be accomplished only through the instrumentality of a constitutional convention under the provisions of the existing constitution. The secretary accordingly was forbidden to include the measure on the ballot.

2. *The Legislature.* Questions of legislative procedure raised incidentally in some of the above cases with respect to constitutional amendments were directly raised in several cases involving legislation. Many constitutions include provisions requiring the publication of notice before the enactment of special or local laws. The applicability of the requirement, the form of the notice, and the method of its proof are fertile sources of litigation. The Georgia supreme court held that a local act must meet this requirement, even though the statute contains a provision for submission in a referendum election to those to be affected.[10] It was also held that the only acceptable proof of notice is a copy of the published notice made a part of the enrolled bill.[11] Failure to include it as the result of a clerical error is a fatal infirmity, since the court cannot go behind the enrolled bill.

Similar refusal to go behind the enrolled bill appears in a Pennsylvania decision. There it was alleged that a bill to levy a property tax for local school purposes was a revenue measure which must originate in the lower legislative chamber. After a recitation of federal and state cases to support the conclusion that this was not a revenue-raising measure within the meaning of that constitutional section, the court concluded that that section was directory to the legislature only and that no justiciable question was presented.[12]

In Illinois, the court considered legislative intent in construing a statute contrary to its express terms. The statute involved was a reapportionment act which made reference to the "village of Stickney." The court held that this meant the "township of Stickney," since the act otherwise construed would be invalid for the exclusion of three square miles of state territory from the plan,

[9] McFadden v. Jordan, 196 P (2nd) 787 (Cal., Aug., 1948). On calling a constitutional convention, see People v. Alger, 35 N.W. (2nd) 669 (Mich., Jan., 1949).

[10] Nickles v. Co. Bd. of Ed., 48 SE (2nd) 546 (Ga., June, 1948).

[11] Manning v. Upshaw, 49 SE (2nd) 874 (Ga., Oct., 1948); Bergman v. Dutton, 48 SE (2nd) 101 (Ga., May, 1948).

[12] Walker Electrical Co. v. Walton, 46 SE (2nd) 184 (Ga., Jan., 1948). But failure to include the caption of the bill in the published notice is not a fatal defect.
Mikell v. School Dist., 58 A (2nd) 339 (Pa., Apr., 1948).

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and since the legislature debated the measure before a map on which lines were drawn to include such territory within a district.[13]

The constitutionality of legislative investigating interim committees was argued again this year in Washington.[14] The court held that the power to create them was an inherent legislative power, not restricted by the constitutional limitation on the duration of legislative sessions, which could be exercised either by statutory enactment or by joint resolution.[15] The increasing cost of the legislative establishment was resisted in several other cases. In one, it was held that a constitutional provision authorizing the legislature to provide a pension system for employees of the state permitted inclusion of legislators.[16] Membership in the system had to be voluntary, however, since the compensation of legislators was fixed by the constitution. In the other case, the legislature was frustrated in increasing the pay of its members under the familiar constitutional inhibition forbidding changes in compensation during the incumbency of its members.[17] The usual evasion, and the one tried here, is an expense allowance. But the court said that in view of the fact that the allowance was a lump sum which could be claimed without any itemization of expenses incurred, the true intent was not an expense allowance but an increase in salary. Elsewhere, however, a similar expense allowance for judicial officers was upheld. [18]

Special constitutional limitations upon the legislative power to appropriate money or make gifts were the subject of several opinions. In the principal one, it was held that the appropriation of money for the construction of a building on state land and its lease to a private organization for the preservation and display of state historical relics and records constituted an appropriation for a public purpose, since the agency was merely employed by the state, and not the objective of the appropriation.[19] Three other cases arose in West Virginia. The court held that an appropriation of money to a state employee who had suffered injuries which the court of claims found occurred in the course of employment was an appropriation for a private purpose forbidden by the constitution.[20] This was so because the employee had not established a case which

[13] People *ex rel.* Barrett v. Anderson, 76 NE (2nd) 773 (Ill., Dec., 1947). See also Opinion of the Justices, 36 So (2nd) 480 (Ala., July, 1948). Compare Nolan v. Newport, 57 A (2nd) 730 (R.I., Mar., 1948), where the court disavowed its power to change the words in a statute and then interprets "may" as "shall."

[14] See State *ex rel.* Hamblen v. Yelle, 185 P (2nd) 723 (Wash., 1947), discussed in Foster H. Sherwood, "State Constitutional Law in 1947–48," in this REVIEW, Vol. 42, p. 698 (1948).

[15] State *ex rel.* Robinson v. Fluent, 191 P (2nd) 241 (Wash., Mar., 1948).

[16] Knight v. Bd. of Admin., 196 P (2nd) 547 (Cal., Aug., 1948).

[17] Scroggie v. Bates, 48 SE (2nd) 634 (S.C., July, 1948). In Romano v. Aten, 35 NW (2nd) 701 (Mich., Feb., 1948), the court held that a constitutional amendment authorizing such an increase might be put into operation at once for the legislature which established the increase, in spite of such a constitutional inhibition.

[18] Manning v. Sims, 213 SW (2nd) 577 (Ky., Aug., 1948).

[19] Thomas v. Daughters of Utah Pioneers, 197 P (2nd) 477 (Utah, July, 1948). See also Loomis v. Keehn, 80 NE (2nd) 368 (Ill., June, 1948).

[20] State v. Sims, 48 SE (2nd) 13 (W. Va., Mar., 1948); State v. Sims, 46 SE (2nd) 81 (W.-Va., Dec., 1947).

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would have permitted him to recover if the employer did not have the state's sovereign immunity. A similar appropriation to compensate the estate of a woman killed by a felon who escaped from prison was approved since the court found that the incident resulted from the negligence of the prison authorities.[21] An appropriation to compensate a corporation for taxes paid prior to a decision holding that such taxes were not required was likewise approved in Missouri.[22] In Alabama, the governor was advised that a state board with power to settle claims of the state did not have power to relieve taxpayers of their tax obligations where the tax was improperly or even unjustly levied, but only when it was of doubtful collectibility.[23]

In California, the law permitting telephone and telegraph companies to construct lines along the highways without payment of a franchise tax was held not to violate the prohibition against gifts, since any corporation taking advantage of the right assumed the obligations of a utility, and the state received valuable service in exchange.[24]

State debt limits presented few problems this year. In one case it was held that the authorization of a bond issue for highway and bridge construction and maintenance did not create a debt within the meaning of the requirement that state debts may be created only after submission of the proposition to the voters.[25] This conclusion was based on the fact that repayment of the obligations involved would come from revenues of the project. The same conclusion was reached with respect to the creation of an armory board with authority to issue bonds secured by property purchased and leased to the state.[26]

3. *Courts.* Recent changes by constitutional amendment in the organization of justice districts in Florida raised some special problems. Prior to the amendment, county commissioners were authorized to establish "not less than two" such districts. The amendment gave the legislature authority to establish "not more than five," when approved by a local referendum. The court held that this provision repealed by implication the former minimum.[27] A similar concern with justice courts arose in Arizona. There it was held that constitutional provisions creating justice courts and providing for the biennial election of state, county, and precinct officers did not prevent the legislature from establishing a four-year term for justices of the peace.[28] The court was somewhat embarrassed by the imposing authorities, including its own prior decisions, arrayed against this conclusion, but was able to justify its stand by reference to a series of California decisions from whose constitution these provisions were taken. In Kentucky, a judicial redistricting act which gave state attorneys until the end of their elective terms to change their residences was upheld

[21] State v. Sims, 46 SE (2nd) 90 (W. Va., Nov., 1947).

[22] State *ex rel.* Kresge Co. v. Howard, 203 SW (2nd) 247 (Mo., Feb., 1948).

[23] Opinion of the Justices, 36 So (2nd) 480 (Ala., July, 1948). See also State v. Southern Pine Co., 38 So (2nd) 442 (Miss., Jan., 1949).

[24] Los Angeles Co. v. So. Cal. Tel. Co., 196 P (2nd) 773 (Cal., Aug., 1948).

[25] Almond v. Gilmer, 51 SE (2nd) 272 (Va., Jan., 1949).

[26] Loomis v. Keehn, 80 NE (2nd) 368 (Ill., June, 1948).

[27] Wilson v. Crews, 34 So (2nd) 114 (Fla., Feb., 1948).

[28] Barrows v. Garvey, 193 P (2nd) 913 (Ariz., May, 1948).

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under a constitutional requirement that such officers be residents of their respective districts.[29]

Judicial procedure and jurisdiction are more jealously guarded from legislative changes. An enlargement of jurisdiction of a juvenile and domestic relations court was approved which duplicated the jurisdiction of the chancery court in spite of constitutional guarantee preserving the jurisdiction of constitutional courts from change.[30] This provision was held to apply only to such courts' inherent powers, which were not involved here, since justices of the peace had had the same concurrent jurisdiction with chancery courts before the constitution. Inherent judicial power was also held to authorize the Missouri court to review and increase the penalty for unprofessional conduct imposed on an attorney by a trial court.[31] Closely allied is a Florida decision holding that the grant of jurisdiction over a type of civil case "implies" power in the court to direct payment of attorney's fees.[32]

In Rhode Island, on the other hand, a statute was declared an invasion of the judicial power which provided that if a deferred sentence is quashed on suspicion of the commission of a second crime, and the grand jury shall refuse to indict for such crime, the deferred sentence shall be reinstated.[33]

4. *The Executive.* Use of the writ of mandamus to compel action by executive officers received attention in two cases. In one, the writ was sought to compel the governor to appoint notaries contrary to the provisions of a statute limiting their number in one class of counties. The court, after concluding that this remedy could run against the governor in a proper case, held that the statutory limit was invalid and issued the writ, although it was noted that, the appointive power being discretionary, the effect of the decision was merely to compel the governor to consider petitioner's application without reference to the statutory limitation.[34] In the other case, it was held that, contrary to the general rule against permitting public officers to raise constitutional questions on mandamus proceedings, the comptroller could raise the question of the validity of an appropriation by his refusal to pay it on the advice of the attorney-general, if an unauthorized expenditure would open him to prosecution for a felony.[35]

The principal case in this group, however, involved the veto power of the governor. The decision concerned a bill passed by the legislature and vetoed by

[29] Cornett v. Clements, 216 SW (2nd) 417 (Ky., Jan., 1949).

[30] Frank v. Juvenile & Dom. Rel. Ct., 58 A (2nd) 601 (N.J., Apr., 1948). See also *Ex Parte* Coone, 195 P (2nd) 149 (Ariz., June, 1948); Dunham v. Stetzberg, 201 P (2nd) 1000 (N.M., Feb., 1949).

[31] *In re* Conner, 207 SW (2nd) 492 (Mo., Jan., 1948). See also Indianapolis Co-op v. Bottema, 79 NE (2nd) 409 (Ind., May, 1948).

[32] *In re* Warner's Estate, 35 So (2nd) 296 (Fla., May, 1948). See also *In re* Crutcher's Estate, 194 P (2nd) 964 (Wash., June, 1948); Montgomery v. Ala. Pwr. Co., 34 So (2nd) 573 (Ala., Feb., 1948).

[33] State v. Garnetts, 63 A (2nd) 777 (R.I., Feb., 1949).

[34] Holman v. Warren, 196 P (2nd) 562 (Cal., Aug., 1948).

[35] State *ex rel.* Kresge Co. v. Howard, 208 SW (2nd) 247 (Mo., Feb., 1948).

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the governor which opened the state to be sued. The constitution provided that the legislature had power to authorize such suits without any specific reference to the governor. In spite of the fact that in some sixty previous cases bills of this kind had been submitted to the governor and such action was supported by judicial language in several opinions, the court held that the legislative action was conclusive and executive action was not required.[36]

5. *Separation of Powers.* The delegation of legislative powers, particularly with reference to local bodies, was discussed in several cases. In spite of the general rule that the separation theory does not apply to local government, it was held that this principle compels the court to construe strictly any such delegation.[37] Accordingly, a delegation of power to license to a special county board could not be used to imply the power to levy a fee to cover the cost of inspection incident to licensing.[38] But while the legislature may delegate its powers to local government, those bodies are limited by the familiar requirement of standards when they in turn delegate authority by ordinance to local administrative bodies.[39] With respect to state authorities, delegation of power to a state board to purchase or construct an office-building was not an unlimited delegation of legislative power.[40]

With respect to other departments, it was held in Georgia that a judge improperly charged a jury in a criminal case by referring to the power of a coördinate department to grant a parole or pardon.[41] Elsewhere it was held that the legislature could constitutionally impose on a magistrate the ministerial duty to report to an executive officer all cases brought before him charging violation of the motor vehicle act where such a vehicle was used.[42] But in Michigan a statute was declared invalid which imposed on circuit court judges the duty of presiding over a board for the compulsory arbitration of labor disputes involving utilities and hospitals. This represents the first decision on the recent rash of such state laws,[43] and the court is careful to point out that

[36] Jefferson Lake Sulphur Co. v. State, 34 So (2nd) 331 (La., Dec., 1947).

[37] Ocean Beach Ferry Corp. v. Village of Ocean Beach, 80 NE (2nd) 137 (N.Y., June, 1948); Mariposa Co. v. Merced Irr. Dist., 196 P (2nd) 920 (Cal., Aug., 1948). See also City of Bethany v. Dist. Ct., 191 P (2nd) 187 (Okla., Mar., 1948).

[38] Henry v. Parrish, 211 SW (2nd) 418 (Ky., Mar., 1948).

[39] Houck v. Minton, 212 SW (2nd) 891 (Tenn., July, 1948); Colyer v. Somerset, 208 SW (2nd) 976 (Ky., Mar., 1948); Robert v. Norfolk, 49 SE (2nd) 697 (Va., Oct., 1948); Duffcon v. Cresskill, 58A (2nd) 104 (N.J., Apr., 1948).

[40] Owens v. Green, 81 NE (2nd) 149 (Ill., May, 1948); Loomis v. Keehn, 80 NE (2nd) 368 (Ill., June, 1948).

[41] Thompson v. State, 47 SE (2nd) 54 (Ga., Mar., 1948).

[42] State v. Shahadi, 61 A (2nd) 299 (N.J., Sept., 1948). In State *ex rel.* Normandy Fire Prot. Dist. v. Smith, 216 SW (2nd) 440 (Mo., Dec., 1948), the delegation of power to incorporate fire districts to circuit courts was upheld. So also with respect to the power to order the inclusion of benefited properties in assessment districts, *In re* Bowdoin St., 35 NW (2nd) 571 (Iowa, Jan, 1949).

[43] Local 170 v. Gadola, 34 NW (2nd) 71 (Mich., Sept., 1948). But see *In re* Donaghy, 83 NE (2nd) 560 (Ill., Jan., 1949). In 1947, Indiana, Minnesota, Missouri, Nebraska, New Jersey, Florida, Pennsylvania, Texas, Virginia, and Wisconsin passed similar compulsory arbitration acts.

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there is no constitutional barrier to compulsory arbitration. The fatal obstacle in this statute was the attempt to confer "administrative" duties on a judge. The other arbitrators were one chosen by the management and one by the employees, or in case of refusal to act, one or both would be selected by the governor.

Although the attorney-general is an executive officer, the function of writing titles for initiative legislative measures is sufficiently judicial to permit court review on appeal.[44] And he may be given the function of striking from the list of state lands property improperly sold to the state for taxes without invading the powers of the judiciary.[45] The work of court clerk in Michigan, however, is not so judicial as to prevent inclusion of such officers under civil service laws by implication.[46]

The leading case in this group concerned an Arkansas statute which established a local chancery court. The act further provided that until the next general election, a specified master in chancery of an existing court should serve. This act was held unconstitutional in so far as the appointment of the officer was concerned, that function being an executive one.[47] Since, further, it was inconceivable that the legislature would have created a judgeship which would not be filled until the next general election two years in the future, the entire act was declared invalid in spite of the severability clause. Since the act creating the office was invalid, the incumbent was not even a *de facto* officer. As a strong dissent pointed out, this had the effect of invalidating all actions of this court *ab initio*.

6. *Administrative Officers and Agencies.* A substantial number of attacks on administrative action continue to take the form of allegations of violation of the separation of powers. These attacks still have a sufficient likelihood of success to be popular, although they are seldom uncombined with other issues. This year allegations of the improper delegation of legislative power to administrative bodies were rejected with respect to a milk control board which had authority to limit deliveries of milk to alternate days in spite of a statute requiring milk to be "produced and distributed fresh daily";[48] and a statute authorizing the secretary of state to revoke a used car dealer's license "for good cause" when revocation was based on a dealer's practice of selling new for used cars.[49] The same attack was, however, successful elsewhere. In one case, a statute forbidding the establishment or maintenance of a nursery, kindergarten, or elementary school by other than public school authorities or religious groups except under regulations prescribed by state officers was held to delegate an unlimited discretion.[50] Similarly, a state N.R.A. code scheme for self-

[44] Richardson v. Neuner, 194 P (2nd) 989 (Ore., June, 1948).
[45] State v. Southern Pine Co., 38 So (2nd) 442 (Miss., Jan., 1949).
[46] Sabbe v. Wayne Co., 33 NW (2nd) 921 (Mich., Oct., 1948).
[47] Howell v. Howell, 208 SW (2nd) 22 Ark., Jan., 1948).
[48] Ala. St. Milk Bd. v. Graham, 33 So (2nd) 11 (Ala., Dec., 1947).
[49] Salway v. Alger, 32 NW (2nd) 505 (Mich., May, 1948).
[50] Packer Inst. v. University, 81 NE (2nd) 80 (N.Y., July, 1948). To the same effect with respect to a zoning ordinance, Duffcon v. Creskill, 58 A (2nd) 104 (N.J., Apr., 1948);

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regulation by the barber trade was invalidated as a delegation of legislative authority.[51] With respect to the delegation of other than legislative authority, a Kansas decision holds that a statute authorizing a state board to transfer a prisoner from the reformatory to the penitentiary is not usurpation of the judicial power.[52] On the other hand, a Tennessee statute was disapproved because it combined legislative and judicial power in the same hands.[53] The legislative authority was said to include the power to order the abatement of conditions constituting nuisances; while judicial authority was exercised when the order compelled relocation of the facilities which admittedly were nuisances. And in Minnesota, a workman's compensation statute was upheld against such an attack because decisions of the commission were not directly enforceable, and because they were subject to judicial review.[54]

A good many state commissions are established in state constitutions to avoid having their purposes thwarted by judicial application of such implied limitations on legislative power. This solution is far from uniformly successful. Thus constitutional creation prevents both legislative impairment and legislative delegation of powers, even when the statute expressly disavows any such intention.[55] In Arizona, it was said that a constitutional provision permitting the legislature to "enlarge the powers" of the corporation commission did not authorize the grant of power to the commission to construe an option agreement to levy.[56] The quoted words were interpreted to mean only that jurisdiction over matters submitted by the constitution to the commission might be enlarged, not that new subjects might be included. The power to construe the agreement was said to be a judicial power entirely separate from the power to approve the option which the commission admittedly had. Likewise, constitutional creation of a fish and game commission was held by implication to oust the legislative power to classify waters of the state as fresh and salt.[57] Finally, this method of creation was held to prevent the legislature from seeking to prescribe a method of valuing utility property in the state. The obligation to fix a fair value imposed on the commission by the constitution was said to carry by implication the exclusive right to determine the method of arriving at the fair value.[58]

The other major question involved in the theory of the separation of powers is the prohibition against holding inconsistent positions. This is very rarely the subject of litigation. Only one such case appears this year. It held that members

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and a licensing ordinance, Mayor, etc., of Hoboken v. Bauer, 59 A (2nd) 809 (N.J., June, 1948).

[51] Renne v. Trade Comm., 192 P (2nd) 563 (Utah, Apr., 1948).

[52] Moffett v. Hudspeth, 198 P (2nd) 153 (Kan., Oct., 1948).

[53] Pharr v. Nashville, etc., Ry., 208 SW (2nd) 1013 (Tenn., Feb., 1948).

[54] Brumhorst v. Beckman, 35 NW (2nd) 719 (Minn., Feb., 1949).

[55] King v. Bd. of Regents, 200 P (2nd) 221 (Nev., Nov., 1948). But see *contra*, Black v. Liquor C. Comm., 35 NW (2nd) 269 (Mich., Dec., 1948)

[56] Trico Elec. Co. v. Ralston, 196 P (2nd) 470 (Ariz., July, 1948).

[57] Beck v. Comm., 33 So (2nd) 594 (Fla., Jan., 1948).

[58] Ethington v. Wright, 189 P (2nd) 209 (Ariz., Jan., 1948).

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of the legislature cannot occupy positions in administrative agencies, even though the latter are not "offices" in the legal sense, without violating the ban against permitting anyone exercising the powers of one of the three departments to exercise the functions of either of the others.[59] Accordingly, the law permitting *de facto* officers to recover compensation did not apply, since the category of *de facto* employee is unknown to the law. The court implied, although it was not required to so hold, that the constitutional ban would prevent contractual rights to compensation from ever arising. Elsewhere, holdover officers were held, whether *de facto* or *de jure*, to possess standing to challenge the constitutionality of an act affecting them.[60] Further, such officers have an obligation to discharge the duties of office even in the face of a constitutional prohibition of terms of office in excess of the expired term.[61]

Problems of administrative procedure raised some unique questions. In one decision it was held that the revocation of a license was not invalid because the complaint was unverified where the statute authorized the administrative officer to initiate the proceedings and he had done so with a valid notice.[62] A similar question was raised under a statute imposing on the commissioner of conservation the duty to enforce the laws respecting the conservation of oil and gas. An oil company complained of practices indulged in by a competitor and the commissioner investigated. He reported certain technical violations and issued a warning, but refused to hold a hearing. The complainant insisted, and finally a hearing was scheduled. Just before the suit, the complainant brought suit under provisions of the statute which authorized such a suit after notice to the commissioner. After reciting the advantages of the administrative process, the court held that until the administrative process was exhausted the courts would not interfere.[63] The statute provided for two alternative methods of enforcement: administrative and judicial. The decision completely eliminates the latter. The last case in this group approved a statute which directed revocation of a driver's license without a hearing or without judicial review upon a showing of conviction for an offense in another state which would be grounds for revocation.[64]

Review of administrative decisions generally raises two arguments; the method for securing such review, and the scope of judicial power to annul or revise the administrative decision. Under the first issue, the cases this year largely concern use of the writ of certiorari. This remedy is held inadequate to

[59] State v. Burch, 80 NE (2nd) 295 (Ind., June, 1948).

[60] Phillips v. West, 213 SW (2nd) 3 (Tenn., July, 1948).

[61] Swank v. Tyndall, 78 NE (2nd) 535 (Ind., Apr. 1948); *Ex parte* Sanders, 215 SW (2nd) 325 (Tex., Nov., 1948).

[62] Salway v. Alger, 32 NW (2nd) 505 (Mich., May, 1948). Compare notice requirements in zoning orders, Louisville, etc. Comm. v. Ogden, 210 SW (2nd) 771 (Ky., May, 1948), and to suspend pension rights, McFeely v. Bd. of Commrs., 62 A (2nd) 686 (N.J., Dec., 1948).

[63] O'Meara v. Union Oil Co., 33 So (2nd) 507 (La., Dec., 1947). Compare Duncan v. Gobler, 215 SW (2nd) 155 (Tex., Nov., 1948).

[64] *In re* Wright, 46 SE (2nd) 696 (N.C., Mar., 1948).

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review action of a governor in removing state officers for malfeasance, since such action is not made reviewable in court by statute and is clearly within the scope of executive power.[65] The only questions which will be considered on certiorari proceedings are allegations of fraud and excess of jurisdiction.[66] Neither of these prohibitions is violated by a state utility commission's classification and valuation of track as main track even though the I.C.C. has classified it as side track, so long as support in the evidence appears.[67] But where the statute permits administrative changes in a county budget on petition of the local governing board, providing an emergency is found to exist, the existence of the emergency is a jurisdictional question which may be determined by the court on certiorari.[68] Likewise, if a commission issues an order directing abandonment of certain utility property found to constitute a nuisance, the order will be invalidated on certiorari when the commission's power is limited to directing the abatement of the nuisance.[69] The review provided, however, extends only to judicial acts or officers, so that the Alabama court refused to review a declaration of the state's presidential electors that they intended to vote for other than the regularly selected candidate of their party.[70]

The scope of review and the treatment of administrative orders varies widely in the other cases. The court reviewed, but upheld as not arbitrary, the action of a zoning board in rejecting a request for a variance on the basis of representations made by a majority of the residents of the district.[71] In Georgia, at the other extreme, the court examined the findings of the public service commission and directed revision in the rates ordered to take account of the cost of litigating the protest as a legitimate and necessary expense, as well as other detailed revisions raised on an allegation of confiscation.[72] While the case was remanded to the commission, the court review practically wrote the new rate schedule.

Administrative sanctions were the subject of three decisions. In one, it was held that it was not improper for a licensing board to order revocation of a trainer's license, when his horse was found to be doped, without permitting him to introduce evidence on his culpability.[73] In another, the court refused to

[65] Allan v. Dirant, 57 A (2nd) 668 (N.J., Mar., 1948).

[66] Compare Granforte v. Bd. of Comm., 58 A (2nd) 902 (Md., May, 1948); and State *ex rel.* Schlick v. Zoning Bd., 35 NW (2nd) 312 (Wis., Dec., 1948).

[67] McCord v. Southern Ry. Co., 213 SW (2nd) 184 (Tenn., May, 1948). See also Sayway v. Anger, 32 NW (2nd) 505 (Mich., May, 1948); McCord v. Nashville, etc., Ry., 213 SW (2nd) 196 (Tenn., May, 1948). Compare Int. Sanit. Comm. v. Weekawken Tp., 63 A (2nd) 528 (N.J., Jan., 1949).

[68] Hunt v. Norton, 198 P (2nd) 124 (Ariz., Sept., 1948).

[69] Pharr v. Nashville, etc. Ry., 208 SW (2nd) 1013 (Tenn., Feb., 1948).

[70] State v. Albritton, 37 So (2nd) 640 (Ala., Dec., 1948). But see Sadlock v. Bd. of Ed., 58 A (2nd) 218 (N.J., Apr., 1948).

[71] Marshall v. City of Mobile, 35 So (2nd) 553 (Ala., May, 1948); and see Gene Autry Prod. v. Ind. Comm. 195 (2nd) 143 (Ariz., June, 1948); *In re* Buffelen Lumber & Mfg. Co., 201 P (2nd) 194 (Wash., Dec., 1948); St. Onge v. City of Concord, 63 A (2nd) 221 (N.H., Jan., 1949).

[72] Southern Bell T. & T. Co. v. Pub. Serv. Comm., 49 SE (2nd) 38 (Ga., July, 1948).

[73] Sandstrom v. Cal. Horse Rac. Bd., 189 P (2nd) 17 (Cal., Feb., 1948).

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take jurisdiction of an action to vacate an order of approval by the public service commission of a transfer of a franchise to a competitor of the plaintiff.[74] The statute forbade such transfers except with the approval of the commission and other laws, claimed to be violated here, prohibiting combinations in restraint of trade. The court concluded that commission approval might be valid even where the antitrust laws were violated, but that the remedies must be kept separate. The third case concerned an administrative subpoena. The court held that such subpoenas could not be enforced in contempt proceedings unless compliance had been ordered by a court after a hearing.[75]

7. *Taxation.* Property tax exemptions in state constitutions provide a fruitful source of litigation. The usual exemption given to public property used for public purpose extends to property purchased by a school board although not devoted to a public purpose on the taxing date.[76] The same exemption does not extend to publicly owned property leased by the state to a private citizen, since in such a case the property is not devoted to a public purpose.[77] Constitutional exemptions of veteran's real property may be limited by statutes which require the veteran to supply certain information concerning his property on pain of forfeiture of the exemption.[78] Approval was given also to legislative extension of a tax exemption to certain businesses in a named county for a ten-year period.[79] This result was based on the familiar doctrine that the constitution of a state is a limitation, not a source, of legislative power and the fact that the South Carolina constitution contains no specific provision prevented the grant of such an exemption. Yet while tax exemptions will be strictly construed, the taxpayer must be given the benefit of the doubt when property can reasonably be classified and taxed either as real property or at a lower rate as personal property.[80]

In Alabama, the legislature levied license and excise taxes in a named city and county, which taxes paralleled similar levies collected by the city. The law was subject to attack on every conceivable ground and was upheld against such allegations as that it invaded the powers of local government, contained defects in its title and concerned more than one subject, and resulted in unequal taxation of corporate property.[81] One feature of the law authorizing the issuance of tax anticipation warrants by the city and county was declared invalid as in conflict with the constitutional prohibition against the creation of

[74] Beard-Laney Inc. v. Darby, 49 SE (2nd) 564 (S.C., Sept., 1948).

[75] Common. *ex rel.* Chidsey v. Mallen, 63 A (2nd) 49 (Pa., Jan., 1949).

[76] Bd. of Ed. v. Bd. of Tax Appeals, 80 NE (2nd) 156 (Ohio, June, 1948). Likewise the exemption of property of the state university works no unconstitutional hardship on a local government which may be required to furnish protective services without cost, Lucking v. People, 31 NW (2nd) 707 (Mich., Apr., 1948).

[77] Div. of Conservation v. Bd. of Tax Appeals, 77 NE (2nd) 242 (Ohio, Jan., 1948).

[78] State v. Allred, 195 P (2nd) 163 (Ariz., June, 1948). But such an exemption cannot be extended to the wife's share of community property without constitutional authorization, Dillard v. N.M. State Tax Comm., 201 P (2nd) 345 (N.M., Jan., 1949).

[79] Byrd v. Lawrimore, 47 SE (2nd) 728 (S.C., May, 1948).

[80] Roseville Pottery v. Co. Bd. of Rev., 77 NE (2nd) 608 (Ohio, Feb., 1948).

[81] Newton v. City of Tuscaloosa, 36 So (2nd) 487 (Ala., June, 1948).

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local debts without a popular vote. This feature, however, was held to be separable from the rest of the law. A similar blanket attack on the Tennessee sales tax was likewise rejected.[82] It was alleged here that the tax was on the privilege of selling at retail but by law was collected from the consumer rather than the retailer; that the right to purchase food is a natural right beyond legislative limitation; that as collected from a consumer whose income is a federal pension, it is an illegal burden; that forbidding the retailer to absorb or to advertise his absorption of the tax impairs freedom of contract and of speech; and that it resulted in unequal levies on property of the same value.

At the other extreme is a Montana decision invalidating a license tax law on dealers in oleomargarine which has been in force for ten years.[83] It was said that taxes may be levied either for regulatory purposes (under the police power), or for revenue (under the taxing power). If the former ground is chosen, the tax cannot exceed the cost of administration. Since this was the purpose in the legislation and the revenue over the ten-year period exceeded the cost of administration by 853 per cent, the law was invalid. It was likewise invalid as a police measure because it was taxation, not for a public purpose, but for the benefit of the dairy industry. Closely analogous is an Iowa decision holding unconstitutional a statute setting aside funds to pay school taxes on agricultural lands in excess of mills.[84] This was held to constitute a gift, to be for a private purpose, and to establish an inequitable classification.

8. *Local Government.* Most of the cases affecting local government arise either under the constitutional prohibition found in almost all states preventing the legislature from passing special acts when general acts are feasible, or under home rule provisions. The cases involve a variety of situations, and call for the exercise of what amounts to an uncontrolled judicial discretion, so that there is no pattern or general rationale in the opinions.[85] Accordingly, only the conclusions are referred to here.

Several important statutes of this kind were declared unconstitutional this year. One would have permitted the establishment of local hospitals with the approval of local inhabitants, including those in unincorporated areas to be affected.[86] Another invalidated a statute which required members of a specified local board of education to possess a high school diploma.[87] A statute levying a

[82] Hooton v. Carson, 209 SW (2nd) 273 (Tenn., Feb., 1948). See also Shapero v. St. Dept. of Rev., 33 NW (2nd) 729 (Mich., Sept., 1948), upholding an intangibles tax on stock representing property taxed as such.

[83] Brackman v. Kruse, 199 P (2nd) 971 (Mont., Nov., 1948).

[84] Dickinson v. Porter, 31 NW (2nd) 110 (Iowa, Feb., 1948).

[85] In Leighton v. Abell, 31 NW (2nd) 646 (Minn., Mar., 1948), some of the unforeseen difficulties in requiring general legislation for municipalities are illustrated. This decision holds that under such limitation cities may not adopt new charters, but may only amend existing ones. Compare Mahood v. City & County of Denver, 195 P (2nd) 379 (Colo., June, 1948).

[86] People v. Spaid, 82 NE (2nd) 435 (Ill., Nov., 1948). See for the same result respecting a zoning plan, Benner v. Tribbitt, 57 A (2nd) 346 (Md., Feb., 1948).

[87] Phillips v. West, 213 SW (2nd) 3 (Tenn., July, 1948). See also State v. Kiburz, 208 SW (2nd) 285 (Mo., Dec., 1947). *Contra,* City of Henderson v. Thomy, 212 SW (2nd) 303 (Ky., June, 1948).

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tax in a named city for the support of the city's fireman's pension fund was similarly declared invalid.[88] Similar laws upheld against the same attack include: a statute permitting a named county to tax amusement tickets;[89] a statute authorizing commissioners rather than the board of education of a named county to handle funds for the construction or repair of school buildings;[90] an act requiring submission to a vote of the affected locality the question of whether the matter of consolidation should be submitted at the next general election;[91] and an authorization to a county to establish a zoning plan.[92]

The financial powers of units of local government are productive of many controversies, both in their relations to taxpayers and in relation to the state legislature, which in spite of such limitations as those mentioned above is constantly concerned with taxation and debts of local units. In Louisiana, the court held that a municipality could not evade limits on the grant of tax exemptions by contracting its borders to exclude a single business.[93] Elsewhere, it was held that the establishment of a free bridge by a city does not create a vested right in its taxpayers to prevent its abolition.[94]

With respect to state control, constitutional prohibitions against the legislative levy of taxes for corporate purposes in Illinois, intended to safeguard local autonomy, were evaded by statutes directing the use of certain local tax monies for such noncorporate purposes as salaries and pensions of teachers and firemen.[95]

Fixed limits on bonded indebtedness of cities and counties not only limit the amount to be borrowed but also the purpose.[96] Limitations on the amount cannot be enacted through the creation of duplicating districts or the transfer of funds where the court finds that evasion is the purpose.[97]

[88] Shillito v. City of Spartanburg, 51 SE (2nd) 95 (S.C., Dec., 1948).

[89] Knoxtenn Theatres v. Dance, 208 SW (2nd) 536 (Tenn., Jan., 1948). The Tennessee constitution also prohibits general or special laws for the benefit of individuals, a prohibition that is only analogous to the one under consideration here. See also Troutman v. Crippen, 212 SW (2nd) 33 (Tenn., May 1937, published June, 1948).

[90] Crewse v. Beller, 212 SW (2nd) 39 (Tenn., May, 1948).

[91] City of Miami Beach v. Crandon, 35 So (2nd) 285 (Fla., May, 1948). But see Cobb v. Burress, 209 SW (2nd) 694 (Ark., Mar., 1948); People v. Deatherage, 81 NE (2nd) 581 (Ill., Sept., 1948); City of Corsicana v. Willmann, 216 SW (2nd) 175 (Tex., Jan., 1949).

[92] Kahl v. Cons. Gas & Elec. Co., 60 A (2nd) 754 (Md., July, 1948). On the power of courts over zoning ordinances, see Lockard v. City of Los Angeles, 202 P (2nd) 38 (Cal., Feb., 1949).

[93] Edwards v. Town of Ponchatoula, 34 So (2nd) 394 (La., Jan., 1948).

[94] City of St. Louis v. Cavanough, 207 SW (2nd) 449 (Mo., Jan., 1948). See also Opinion of the Justices, 79 NE (2nd) 889 (Mass., June, 1948), holding that the state may forbid municipalities from continuing in the business of selling cemetery monuments; and Town of Bridgie v. Co. of Koochiching, 35 NW (2nd) 537 (Minn., Jan., 1949), holding that towns may be dissolved under general authorization of the state.

[95] People *ex rel.* Nelson v. Jackson-Highland Bldg., 81 NE (2nd) 578 (Ill., Sept., 1948); Somers v. Patton, 78 NE (2nd) 313 (Ill., Mar., 1948).

[96] Marshall v. Rose, 49 SE (2nd) 720 (S.C., Sept., 1948). Compare State v. Bartling, 31 NW (2nd) 422 (Neb., Mar., 1948).

[97] Morgan v. Bd. of Sup., 192 P (2nd) 236 (Ariz., Apr., 1948); Almond v. Bilmer, 49 SE (2nd) 431 (Va., Sept., 1948).

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Procedural requirements involving bond issues approved by taxpayers are, as a rule, not strictly construed. Thus an election was not invalid because persons eligible to vote otherwise were prevented from voting on the bond issue due to the fact that they possessed tax exemptions.[98] This is even more true when the bonds have already been issued. Then the court will do all in its power to rationalize their validity, even to reversing its own decisions.[99] But the requirement of a referendum election will be applied to any proposed financial transaction which can be construed as producing a public debt, as distinguished from an obligation secured by a revenue-producing business.[100]

Four statutes providing for local support of public housing projects were attacked this year on the ground that the purpose was not a public one. Three were upheld[101] and one was declared unconstitutional.[102] Public purpose was also found an acceptable basis to justify the withdrawal of public garden property for the relief of traffic congestion.[103]

9. *Political Processes.* The presidential election and the intraparty conflicts accompanying it produced a small but significant group of decisions. In Maryland, Georgia, South Carolina, and Alabama, the "Dixicrat" groups created some problems. In the latter, as noted above,[104] the court refused to compel them to vote for the regular party nominees. The Georgia case was an action in *quo warranto* brought by one chairman of the state Democratic executive committee against another. The petitioner had been elected at the regular convention in 1946 for a four-year term. He alleged that his rival had been selected by a convention a year later which had not been properly called and could not speak for the party. The court admitted that the position was not a public office, but none the less held that the writ should issue since the rights involved were capable of judicial inquiry and were not therefore purely political.[105] In Maryland, the court refused to compel acceptance of the list of electors for the states' rights group after the deadline fixed in the law for nominating petitions for "state-wide officers."[106] In Minnesota, the court refused to rule on the question of whether a state nominating convention properly determined a contest to seat delegates.[107] It was admitted that the convention was legally called and organized and that no statutory right of action existed. The South

[98] Morgan v. Bd. of Supp., *supra.*

[99] Gentzler v. Smith, 31 NW (2nd) 668 (Mich., Apr., 1948).

[100] Compare Almond v. Bilmer, 49 SE (2nd) 431 (Va., Sept., 1948), with State v. City of Datona Beach, 34 So (2nd) 309 (Fla., Feb., 1948); Boney v. Bd. of Trustees, 48 SE (2nd) 56 (N.C., June, 1948); and Campter v. Sanderlin, 208 SW (2nd) 16 (Ark., Jan., 1948).

[101] Cremer v. Peoria Hous. Auth., 78 NE (2nd) 276 (Ill., Mar., 1948); John Hancock Mut. Life Ins., Co. v. Ford Motor Co., 33 NW (2nd) 763 (Mich., Sept., 1948); Opinion to the Governor, 63 A (2nd) 724 (R.I., Jan., 1949).

[102] State *ex rel.* Martin v. Giessel, 31 NW (2nd) 626 (Wis., Mar., 1948).

[103] Lowell v. City of Boston, 79 NE (2nd) 713 (Mass., Apr., 1948).

[104] See note 70 *supra.*

[105] Morris v. Peters, 46 SE (2nd) 729 (Ga., Feb., 1948).

[106] Vaughn v. Boone, 62 A (2nd) 351 (Md., Oct., 1948).

[107] Dem. Farmer Labor St. Cent. Comm. v. Benson, 33 NW (2nd) 831 (Minn., Sept., 1948).

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Carolina court reviewed the sufficiency of the petition creating the new party and ordered it to be recognized over the protest of the elections board which had held otherwise.[108]

Initiative and referenda questions produced few new answers of importance. In Colorado, it was held that provisions of a soil conservation act which required a land-use ordinance to be submitted to the voters of a soil erosion district for approval was not governed by referendum or election procedures of the constitution.[109] Elsewhere, a referendum election was ordered on a local ordinance for the establishment of an airport.[110] The constitution prevented referenda on emergency measures, the determination of which was said to be a judicial function, although its legislative declaration was entitled to great weight. The initiative is directly[111] involved in only one case. The constitution concerned provided that if the legislature failed to enact the initiated measure without change, it, together with any similar or substitute bill, should be submitted to the voters in such a way that they could choose either or reject both. The court held that if the legislative measure could not exist without conflicting with the initiative measure, the former must be submitted.[112]

"The right of American Indians to vote in Arizona elections for state and federal officers has after two decades again arisen, like Banquo's ghost, to challenge" the Arizona court.[113] It was held that Indians on reservations acquired "residence within the state" required for voting.[114] Further, the prohibition of the suffrage to persons under guardianship or not *sui juris* was ruled to be an individual and not a group disqualification. The decision, expressly overruling prior decisions, represents a significant broadening of the electorate, reflected on a smaller scale in a Texas decision. There the court was faced with a challenge to the validity of certain votes cast in an election by voters who were exempt from the poll tax by reason of age. The statute involved provided that such exempt persons living in cities of 10,000 population or greater must procure new exemption certificates in any year in which they seek to vote. The court held that this statute did not violate constitutional provisions respecting voting, but that the new certificate need not be required within the calendar year of the election.[115] At the other extreme is a Florida decision invalidating

[108] States' Rights Dem. Party v. St. Bd. of Elections, 49 SE (2nd) 379 (S.C., Sept., 1948). The board attempted to limit the valid signatures to those of persons who had not voted in any party primary that year. This was held to be beyond its power under the law and constitution.

[109] People v. Parker, 192 P (2nd) 417 (Colo., Mar., 1948).

[110] State v. Martin, 189 P (2nd) 637 (Wash., Feb., 1948).

[111] In Case v. Morrison, 197 P (2nd) 621 (Colo., Sept., 1948), the signature of a woman who used her husband's initials preceded by "Mrs.," and who had no street address so that she gave only the town of her residence, was held to be a valid signature on an initiative petition.

[112] Farris v. Goss, 60 A (2nd) 908 (Me., July, 1948).

[113] Harrison v. Laveen, 196 P (2nd) 456, 457 (Ariz., July, 1948), reversing Porter v. Hall, 271 P 411 (1928).

[114] See also State *ex rel.* Owens v. Chaplin, 47 SE (2nd) 12 (N.C., Apr., 1948).

[115] Thomas v. Croebl, 212 SW (2nd) 625 (Tex., June, 1948).

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an absentee ballot accompanied by an affidavit that the voter expected to be absent from the city, when the law required the voter to swear his intention to be absent from the country.[116] It was said that, absentee voting being unknown to the common law, requirements for such voting must be strictly enforced. Normally, however, courts do not seek to intervene to prevent choices by the electorate where such choices can be effective. When a city charter would be unconstitutional if adopted, the courts will enjoin its submission to the electorate.[117] But where the election is sought to be predetermined by an action for a certificate of nomination prior to the elections on the ground that relator's sole rival lacks the statutory qualifications for the office, no cause of action is held to exist.[118] Likewise, where the election has been held, it validates preëlection procedural irregularities, such as the sufficiency of the petition.[119]

II. CIVIL RIGHTS

1. *Freedom of Speech, Press, and Assembly.* Local licensing and regulatory statutes were attacked in greater number this year than last, and several of them were declared unconstitutional: an ordinance prohibiting the cluttering of streets with trash as applied to a person disseminating political literature or material advocating particular ideologies;[120] an ordinance prohibiting the solicitation of contributions with respect to selling anything of any nature for any purpose on public streets without first obtaining a permit from an administrative officer;[121] and an ordinance prohibiting canvassing, soliciting, or distribution of circulars without a written permit from the chief of police, who has discretion to refuse such a permit if he finds the applicant not to be of good character, and requiring the applicant to give many details about his person and to be photographed and fingerprinted.[122] On the other hand, an ordinance prohibiting disturbances or a breach of peace was upheld as applied to a speaker who, by his violent antisemitic remarks, tended to breach the peace.[123] Similarly, a statute was upheld which made it unlawful to encourage an assembly near the location of a labor dispute to prevent any person engaging in a lawful occupation.[124]

[116] Frink v. State *ex. rel.* Turk, 35 So (2nd) 10 (Fla., Apr., 1948).

[117] Schneider v. Lansdale, 61 A (2nd) 671 (Md., Oct., 1948).

[118] State *ex rel.* Robinett v. Jarrett, 196 P (2nd) 849 (Okla., June, 1948). But in Miles v. Bd. of Sup., 33 So (2nd) 819 (Miss., Feb., 1948), a local option election was forbidden solely because the board determined the sufficiency of the petition without an open hearing.

[119] Pearson v. Taylor, 32 So (2nd) 826 (Fla., Dec., 1947); People v. Deatherage, 81 NE (2nd) 581 (Ill., Sept., 1948).

[120] City of New Orleans v. Hood, 32 So (2nd) 899 (La., Nov., 1947).

[121] Robert v. City of Norfolk, 49 SE (2nd) 697 (Va., Oct., 1948).

[122] Evans v. Lepore, 59 A (2nd) 385 (N.Y., May, 1948).

[123] City of Chicago v. Terminiello, 79 NE (2nd) 39 (Ill., Mar., 1948). Reversed, 69 S. Ct. 894 (1949). Terminiello is one of the followers of Gerald L. K. Smith.

[124] Cole v. State, 216 SW (2nd) 402 (Ark., Jan., 1949). The case had been remanded by the U.S. Supreme Court for rulings on the constitutional issues, 333 U.S. 196, 68 S. Ct. 514 (1948). The act in question is identical with the Texas statute involved in Sanford v. Hill, 316 U.S. 647, 62 S. Ct., 1292 (1941). Compare Saia v. People, 334 U.S., 558 (1949).

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Statutes and injunctions forbidding picketing were declared unconstitutional this year in several cases: a Missouri statute forbidding peaceful picketing when no labor dispute exists;[125] and an injunction enjoining a union from any act, agreement, or concerted activity to persuade or induce a railroad or its employees to refuse to handle goods of patrons with whom the union might be engaged in a labor dispute.[126] The right to picket is a private individual right which may be waived. The Alabama court held that this right was waived by members of a union who entered into a contract with the employer protecting him from strikes.[127] Picketing can be protected only if it is lawful; picketing of a plant, where the majority of the employees had expressed a desire not to join any union, in order to force the employer to sign a contract to employ only union labor is not considered lawful.[128] Picketing of a fully unionized plant in order to force the employer into a combination determined by the court to be in restraint of trade is not protected by the guarantee of freedom of speech.[129]

With respect to previous restraints on publications, there are only two decisions. The Illinois court declared an injunction restraining a union from publishing allegedly defamatory statements as in violation of the freedom of the press.[130] The opposite conclusion was reached with respect to a statute making it an offense to publish, except in court proceedings, the name of any female subjected to a criminal assault.[131] The same solicitude for freedom of the press does not, of course, appear in libel actions.[132]

2. *Freedon of Religion.* Jehovah's Witnesses attacked a statute making it a misdemeanor for a person to go upon the premises of another without authority after having been forbidden to do so by the owner or his representative, and regulations adopted by private apartment buildings requiring all visitors to be announced to the tenants and forbidding any canvassing, peddling, or soliciting, as infringements upon the freedom of religion. However, all the regulations in question were upheld by the supreme courts of two states.[133]

Such regulatory measures as requiring the vaccination of school children as a prerequisite to their admission to the public schools,[134] and a zoning restric-

[125] *Ex parte* Hunn, 207 SW (2nd) 468 (Mo., Jan., 1948). See *contra*, Int. Broth. v. Publix Cab. Co., 202 P (2nd) 154 (Colo., Jan., 1949).

[126] Northwestern Pac. R. Co. v. Lumber & Sawmill Workers' Union etc., 189 P (2nd) 277 (Cal., Feb., 1948).

[127] Alabama Cartage Co. v. International Brotherhood, 34 So (2nd) 576 (Ala., Mar., 1948).

[128] Wilbank v. Chester, etc., Union, 60 A (2nd) 21 (Pa., July, 1948); Nashville Corp. v. United Steelworkers, 215 SW (2nd) 818 (Tenn., Oct., 1948).

[129] Empire Storage & Ice Co. v. Gileoney, 210 SW (2nd) 55 (Mo., Mar., 1948).

[130] Montgomery Ward & Co. v. United, etc. Emp., 79 NE (2nd) 46 (Ill., Mar., 1948).

[131] State v. Evjue, 33 NW (2nd) 305 (Wis., July, 1948).

[132] Kennedy v. Item Co., 34 So (2nd) 886 (La., Feb., 1948); Barwick v. Wind, 48 SE (2nd) 523 (Ga., June 1948).

[133] Hall v. Commonwealth, 49 SE (2nd) 369 (Va., Sept. 1948); Watchtower Bible & Tract Soc. v. Metropolitan Life Ins. Co. 79 NE (2nd) 433 (N.Y., Apr., 1948).

[134] Sadlock v. Bd. of Education, 58A (2nd) 218 (N. Y., Apr., 1948); Mosier v. Barron Co. Bd. of Health, 215 SW (2nd) 967 (Ky., Dec., 1948).

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tion applied to prevent the establishment of a church in a residential district,[135] were upheld as not protected by the guarantees of freedom of religion. The same result was reached with respect to legislation forbidding the handling of reptiles in a manner to endanger any person, in so far as such legislation affected religious services.[136]

The prohibition against the appropriation of public moneys for religious purposes seems to be relaxed this year by a decision of the supreme court of Utah. Certain acts of the state legislature provided for the leasing of state land to the Daughters of Utah Pioneers, a society organized for the perpetuation of the Mormon faith, for the erection and maintenance of a Pioneer Memorial Building, and for the appropriation of specified sums for use in the construction of such a building. The court declared that since the history of Utah was so intimately connected with the Mormon faith, the separation of church and state would, if strictly construed, "forever doom this state to silence about its own history for fear it may violate its own constitutional prohibition."[137]

3. *Equal Protection.* This constitutional guarantee has had the traditional function of furnishing a basis for the judicial invalidation of legislative acts which single out for special treatment individuals or groups whose special status does not rest on any judicially acceptable standard. In this traditional view, a Sunday closing ordinance which exempts sales of sporting goods, nursery items, toiletries, tobacco, and beer was held unconstitutional because it applied only to retail merchants and specifically exempted many items sold by them.[138] The same fate met a statute prohibiting the discharge of certain substances harmful to fish into streams, but exempting corporations chartered before a certain date;[139] a law authorizing payment from a compensation fund, eligibility for which is so narrowly defined as to apply to a single individual;[140] and a statute setting license fees for manufacturers and wholesalers of wine at higher levels than for similar dealers in other intoxicating beverages.[141]

In a closely related sense, it is used to invalidate administrative acts which are found to be arbitrary or unjust. In this sense, it is used almost interchangeably with the guarantee of due process of law. Such acts fall in this category as printing the names of Negroes on jury lists in a special color of ink, so they were never called although they constituted sixty per cent of the population,[142]

[135] Housing Authority of Gallatin County v. Church of God, 81 NE (2nd) 500 (Ill., Sept., 1948).

[136] State v. Massey, 51 SE (2nd) 179 (N.C., Jan., 1949); Harden v. State, 216 SW (2nd) 708 (Tenn., Jan., 1949).

[137] Thomas v. Daughters of Utah Pioneers, 197 P (2nd) 477 (Utah, July, 1948).

[138] Gronlund v. Salt Lake City, 194 P (2nd) 464 (Utah, June, 1948). A similar charge invalidated the state Sunday closing law in Broadbent v. Gibson, 105 Utah 53, 140 P (2nd) 939 (1943).

[139] State v. Glidden 46 SE (2nd) 860 (N.C., Mar., 1948).

[140] Lowe v. Hagerle Bros., 33 NW (2nd) 598 (Minn., July, 1948).

[141] George Benz Sons v. Ericson, 34 NW (2nd) 725 (Minn., July, 1948).

[142] State v. Speller, 47 SE (2nd) 537 (N.C., May, 1948).

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and denying an application for permission to construct a driveway on a mistaken interpretation of the law.[143]

In ever-increasing frequency, however, the charge of a denial of equal protection appears as a part of a broadside against a statute or order. In such cases, this charge is merely one among many, evidence as a rule that the litigant is making up in variety what he lacks in law for his protest. Such attacks are seldom effective. Allegations of denial of equal protection were rejected with respect to: a mining conservation act;[144] a statute extending the time for holding elections in a single district;[145] a statute authorizing counties to recover costs of treating insane persons from their estates;[146] and an authorization to state educational authorities to operate a laundry and dry-cleaning service for students at any state school.[147]

Several such allegations were rejected with respect to statutes affecting remedies or penalties of some individuals not previously separately treated. These statutes include one which forbids disaffirmance of a contract for services by a minor when the contract has been approved by a superior court,[148] a reduction in the time within which certain classes of claimants must bring damage actions,[149] the extension to one guilty of aiding an escape of the same penalty as the convict assisted,[150] a statute punishing males found guilty of visiting houses of ill fame,[151] and a statute dissolving the Boston Railroad Holding Company.[152]

In addition to the above cases, there is an increasing number of adjudications rejecting the denial of equal protection where the statutes involved attempt some classification and the attack is principally upon that feature. In such instances, judicial approval is usually based upon some evidence of a factual rationale of the classification. Such laws include an ordinance declaring squirrels, but not other animals, a nuisance in certain areas;[153] a zoning ordinance to which exemptions have been granted;[154] the levy of license taxes on certain types of businesses but not on all or containing exemptions of residents of certain areas or of certain groups;[155] exemptions of property or income pro-

[143] Newman v. City of Newport, 57 A (2nd) 173 (R.I., Jan., 1948).

[144] Dufour v. Maize, 56 A (2nd) 675 (Pa., Jan., 1948).

[145] Wallace v. Lewollen, 210 SW (2nd) 684 (Tenn., May, 1948). See also Bd. of Co. Commrs. v. Robb, 199 P (2nd) 530 (Kan. Nov., 1948).

[146] McKenna v. Roberts Co., 32 NW (2nd) 687 (S.D., June, 1948).

[147] Villyard v. Regents of University, 50 SE (2nd) 313 (Ga., Nov., 1948).

[148] Warner Bros. Pictures v. Brodel, 192 P (2nd) 949 (Cal., May, 1948).

[149] Elam v. Bruenger, 193 P (2nd) 225 (Kan., May, 1948); Wenke v. Ziebarth Const. Co., 202 P (2nd) 384 (Idaho, Feb., 1949).

[150] People v. Nicholson, 82 NE (2nd) 656 (Ill., Nov., 1948).

[151] State v. Griffin, 79 NE (2nd) 537 (Ind., May, 1948).

[152] Delaware & Hudson Co. v. Boston R. Hold Co., 81 NE (2nd) 553 (Mass., Oct., 1948).

[153] Atkinson v. City of Denver, 195 P (2nd) 977 (Colo., June, 1948).

[154] Greenway Homes v. Borough of River Edge, 60 A (2nd) 811 (N.J., Aug., 1948).

[155] Smith v. City of Miami, 34 So. (2nd) 544 (Fla., Mar., 1948); Harrell v. Scheleman, 36 So (2nd) 431 (Fla., June, 1948). See also Atkinson v. Sapperstein, 60 A (2nd) 737 (Md., July, 1948); Leeman v. Vocelka, 32 NW (2nd) 274 (Neb., May, 1948); Doller v. Reid, 214 SW (2nd) 584 (Ky., Oct., 1948); State v. Saia, 33 So (2nd) 665 (La., Jan., 1948); Mutchal,

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vided in tax statutes;[156] and statutes regulating an aspect of business as it effects a single type of business, as for example, limiting the interest rates of pawnbrokers[157] or forbidding aircraft but not boats access to a lake.[158]

4. *Police Power*. Regulation of business and the limits of the police power of the state are, as usual, fruitful sources of litigation. Among the regulatory measures declared to be unjustified under the police power was the denial of a building permit for a filling station when such denial was based on the objections of a majority of local residents.[159] The court based its decision on the advantages it saw in the plans for the area. The conviction that the regulatory measure would produce unfortunate results to the community and work an unreasonable hardship on those engaged in what the court considered a legitimate business resulted in the invalidation of a tax levied on a firm which made a business of cashing payroll checks on the premises of and on contract with an employer;[160] the exemption of a passenger car rental service from the requirement of securing a certificate of convenience from the utility commission, since such a business is not affected with a public interest;[161] the invalidation of a denial of the right to sell monuments to cemeteries;[162] and the invalidation of an ordinance closing meat stores on Monday in the absence of an emergency.[163]

An increasing number of similar regulatory acts are, however, being upheld. This year, these include an act prohibiting discrimination in employment for joining or failing to join a labor union,[164] two retail price maintenance

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v. City of Kalamazoo, 35 NW (2nd) 245 (Mich., Dec., 1948); Ludwig v. Harston, 197 P (2nd) 252 (Wyo., Aug. 1948); Harry D. Kantor & Son v. Stone, 34 So. (2nd) 492 (Miss., Mar., 1948); Hay v. Leonard, 46 SE (2nd) 653 (S.C., Feb., 1948); Anderson v. State, 213 SW (2nd) 615 (Ark., Oct., 1948); Dodgen v. Depuglio, 209 SW (2nd) 588 (Tex., Mar., 1948); La. Wholesale Dist. Assoc., v. Rosenzweig, 36 So. (2nd) 403 (La., June, 1948).

[156] Greaves v. Houlton Water Co., 59 A (2nd) 217 (Me., May, 1948); John Hancock Mut. Life Ins. Co. v. Haworth, 191 P (2nd) 359 (Idaho, Mar., 1948). See also Hamilton v. Adkins, 35 So (2nd) 183 (Ala., Apr., 1948), and Dickinson v. Porter, 35 NW (2nd) 66 (Iowa, Dec., 1948).

[157] Peel v. Dummit, 214 SW (2nd) 605 (Ky., Oct., 1948). See also City of Springfield v. Stevens, 216 SW (2nd) 450 (Mo., Jan., 1949); Price v. Ry. Exp. Co., 78 NE (2nd) 13 (Mass., Mar., 1948).

[158] City of Shreveport v. Conrad, 33 So (2nd) 503 (La., Dec., 1947). To the same effect, see State v. Trahan, 36 So. (2nd) 652 (La., Feb., 1948), which reaches a conclusion substantially contrary to Gronlund v. Salt Lake City above.

[159] Benner v. Tribbitt, 57 A (2nd) 346 (Md., Feb., 1948). The local governments involved had no zoning power, so cases were decided individually.

[160] People v. Thillens, 79 NE (2nd) 609 (Ill., May, 1948). Community currency exchanges not operated on contract with employers but performing the service for the general public remain subject to the tax. Compare Snyder v. Lincoln, 35 NW (2nd) 483 (Neb., Dec., 1948).

[161] Herz Drivurself Stations v. Siggens, 58 A (2nd) 464 (Pa., Mar., 1948).

[162] Opinion of the Justices, 79 NE (2nd) 883 (Mass., Apr., 1948).

[163] Safeway Stores v. Botti, 60 A (2nd) 318 (N.J., July, 1948).

[164] Mascari v. Int. Broth., 209 SW (2nd) 756 (Tenn., Feb., 1948). This statute does not affect the union's right to picket a plant employing non-union labor.

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acts,[165] a statute prohibiting the practice of naturopathy,[166] an act prohibiting the making of dentures except under the supervision of a licensed dentist,[167] a statute prohibiting the sale of a milk product with less than 3 per cent butterfat content as applied to a "chocolate drink,"[168] prohibition of the sale of 3.2 per cent beer on Sundays,[169] requiring a gas company to repair consumers' gas lines without charges,[170] a parking meter ordinance,[171] an occupation license tax,[172] and an act authorizing a utilities commission to suspend provisions of contracts for delivery of natural gas during an emergency.[173]

The only one of these cases which presents any unique features is a Pennsylvania decision which upholds the right of a municipality to establish and maintain parking lots, even though such facilities will be in competition with private business.[174] Even here, however, there is little more than the conclusion given. It is impossible to reconcile the decisions on this subject, both because reference to generally accepted principles is almost always lacking in the opinions, and the results reflect not much more than the deciding justice's personal convictions as to the wisdom of the measure and the worth of the complainant. This led one judge to admit frankly that "the limits of the state's police power has (*sic*) never been fixed nor its boundaries defined."[175]

5. *Due Process in Criminal Proceedings.* Again this year the majority of cases on civil rights involve criminal procedure.

The right to a speedy trial was held to be violated where eighteen months elapsed after the preliminary examination of the defendants and the state was granted another continuance until a material witness would be released from prison in two and one-half years; the court ordered the examining magistrate to proceed with the examination or to dismiss the charges within sixty days.[176]

Arrest may be made and evidence seized without a warrant where officers lawfully enter a gambling establishment to serve a temporary restraining order in a civil action and find a public nuisance being operated in their presence.[177]

[165] Blum v. Engelman, 57 A (2nd) 421 (Md., Feb., 1948); Hill v. Kusy, 35 NW (2nd) 594 (Neb., Jan., 1949).

[166] Davis v. Beller, 207 SW (2nd) 343 (Tenn., Jan., 1948).

[167] Weill v. State *ex rel* Gaillard, 34 So (2nd) 132 (Ala., Jan., 1948).

[168] Thayer v. Mich. Dept. of Agric. 35 NW (2nd) 360 (Mich., Jan., 1949).

[169] Nickols v. North Kansas City, 214 SW (2nd) 710 (Mo., Nov., 1948).

[170] Clough v. North Central Gas Co., 34 NW (2nd) 862 (Neb., Nov., 1948).

[171] City of Decatur v. Robinson, 36 So. (2nd) 673 (Ala., June, 1948).

[172] City of Louisville v. Sebree, 214 SW (2nd) 248 (Ky., Aug., 1948).

[173] City of Akron v. P.U.C., 78 NE (2nd) 890 (Ohio, Apr., 1948).

[174] McSorley v. Fitzgerald, 59 A (2nd) 142 (Pa., May, 1948). But see *contra*, respecting public housing, opinion to the Governor, 63 A (2nd) 724 (R.I., Jan., 1949).

[175] City of Decatur v. Robinson, 36 So. (2nd) 673, 684 (Ala., June, 1948). See also Du Page Co. v. Henderson, 83 NE (2nd) 720 (Ill., Jan., 1949).

[176] People v. Den Uyl, 31 NW (2nd) 699 (Mich., Apr., 1948). The witness had been sentenced for fleeing the state to avoid testifying.

[177] State v. Pelosi, 199 P (2nd) 125 (Ariz., Nov., 1948). On the scope of a search permitted on a warrant, see Peters v. State, 215 SW (2nd) 822 (Tenn., Dec., 1948). See also *Ex parte* City of Mobile, 38 So. (2nd) 330 (Ala., Jan., 1949).

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The admissibility of a confession is denied where the defendant was under the influence of benzedrine,[178] or where the oral confession was obtained by beating and abusing the defendant and the written confession was made the following day in the presence of officers.[179] On the other hand, a confession was not necessarily given involuntarily where the defendant, upon his arrest, was not immediately taken before a magistrate, and was interrogated each day for five days by police officers without the opportunity to consult with counsel or friends.[180] Nor is a conviction necessarily invalid because based on a plea of guilty unsupported by any evidence.[181]

Protection against self-incrimination justifies the judge in a civil damage suit in excluding plaintiff's offer to show defendant's refusal to testify in previous criminal proceedings for reckless driving.[182] Yet this protection cannot be invoked in behalf of an accomplice where the accused maintained that the testimony of that accomplice was coerced by threats of physical violence, but the accomplice had not invoked it himself.[183]

When the commission of an act charged as a crime was proved, and the defense sought to be established was defendant's insanity, a statute providing that such insanity must be proven beyond a reasonable doubt was upheld against the charge that it deprives the defendant of due process by taking away his presumption of innocence.[184] On the other hand, an arrested person has the right to call for evidence in his favor, and where the arresting officer and the jailer denied the accused this right, a subsequent conviction cannot stand.[185] The right of the accused to be confronted with the witnesses against him is not violated where he and a co-defendant accuse one another and he was not permitted to testify in the separate prosecution of the co-defendant.[186] Due process is not violated solely because of the speed with which the trial was conducted, in the absence of a showing that some specific injustice resulted,[187] nor because of a refusal of the court to order an investigation on application for parole.[188]

Jury trial guarantees permit the trial of the accused in the county in which the crime is alleged to have taken place after his extradition from another

[178] Lobaugh v. State, 82 NE (2nd) 247 (Ind., Nov., 1948).

[179] People v. Thomlison, 81 NE (2nd) 434 (Ill., Sept., 1948).

[180] Commonwealth v. Turner, 58 A (2nd) 61 (Pa., Mar., 1948). See also Oaks v. Hudspeth, 198 P (2nd) 168 (Kan., Oct., 1948); Cox v. Hudspeth, 198 P (2nd) 177 (Kan., Oct., 1948). *Contra*, Hale v. Ohio, 332 U.S. 596 (1948).

[181] McGrew v. Comm., 215 SW (2nd) 996 (Ky., Dec., 1948).

[182] Hall Motor Freight v. Montgomery, 212 SW (2nd) 748 (Mo., June, 1948).

[183] State v. Miller, 208 SW (2nd) 194 (Mo., Feb., 1948).

[184] State v. Grieco, 195 P (2nd) 183 (Ore., June, 1948).

[185] Winston v. Comm., 49 SE (2nd) 611 (Va., Oct., 1948); Parsons v. State, 38 So (2nd) 209 (Ala., Dec., 1948). However, such objections must be promptly made, People v. Quicksall, 33 NW (2nd) 904 (Mich., Oct., 1948).

[186] State *ex rel.* Sawyer v. Warden, 60 A (2nd) 196 (Md., May, 1948).

[187] Gibbons v. Hudspeth, 199 P (2nd) 173 (Kan., Nov., 1948); State *ex rel.* Eyer v. Warden 59 A (2nd) 745 (Md., May, 1948); People v. Fleisher, 34 NW (2nd) 15 (Mich., Oct., 1948); People v. Deese, 83 NE (2nd) 707 (Ill., Jan., 1949).

[188] People v. Syer, 81 NE (2nd) 186 (Ill., May, 1948).

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state, and not in the county where he may be "found" as provided by statute.[189] The use of a so-called "jury primer," prepared by the trial judge, for the instruction of prospective jurors in general principles of law and court procedure constitutes an indoctrination prior to the call for service and cannot be upheld.[190] It cannot be said that a jury is misled or influenced by a statement of the prosecutor referring to the defendant as a "Philadelphia foreigner."[191] But an instruction to the jury defining "reasonable doubt," which was "confusing, argumentative, and prejudicial,"[192] is reversible error. Further, a jury cannot reconvene after it has been discharged, state that its former verdict was incomplete, and announce a new and different verdict.[193]

The right to be represented by counsel is still a frequent subject of litigation. Due process is violated if counsel is not appointed where a defendant was charged in a police court with a misdemeanor and requested counsel, where a defendant in a capital case[194] is unable to employ counsel and incapable of adequately making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like,[195] or where the defendant is youthful and inexperienced, and the evidence against him is weak, but he did not request counsel.[196] On the other hand, in a non-capital case where the record is silent as to the appointment of counsel and the defendant did not, on oath, state that he was indigent and did not request counsel, he may be considered to have waived a personal privilege.[197] Similarly, in larceny proceedings the trial of the defendant without benefit of counsel[198] or the failure of the court to advise the defendant of his right to counsel before entering a plea of guilty[199] do not constitute a violation of due process. Furthermore, the court is not obligated to appoint counsel where the defendant is mature and aware of his rights, the record is silent as to his financial status, and he made no request for counsel.[200] Where the accused chose his own counsel and such counsel proceeded without consulting with his client, violation of due process cannot be claimed.[201]

[189] Howell v. Commonwealth, 46 SE (2nd) 37 (Va., Jan., 1948).

[190] People v. Schoos, 78 NE (2nd) 245 (Ill., Mar., 1948). Legislative efforts to control the contents of charges to the jury were disregarded in Simmons v. State, 36 So (2nd) 207 (Fla., June, 1948). See also Petition of Bryant, 35 NW (2nd) 371 (Mich., Jan., 1949).

[191] Glickman v. State, 60 A (2nd) 216 (Md., May, 1948). See also Oepple v. State, 59 A (2nd) 509 (Md., May, 1948); State v. Fitch, 200 P (2nd) 991 (Nev., Dec., 1948).

[192] State v. Dickens, 191 P (2nd) 364, 368 (Ida., Mar., 1948).

[193] Commonwealth v. Johnson, 59 A (2nd) 128 (Pa., May, 1948).

[194] *Ex parte* McCoy, 194 P (2nd) 531 (Cal., June, 1948).

[195] *In re* Taylor, 49 SE (2nd) 749 (N.C., Oct., 1948).

[196] Stonebreaker v. Smyth, 46 SE (2nd) 406 (Va., Mar., 1948). Compare Wade v. Mayo, 334 U.S. 672 (1948); Uneges v. Pa., 69 S. Ct. 184 (1948).

[197] People v. Ross, 79 NE (2nd) 495 (Ill., May, 1948); Comm. v. Burke, 63 A (2nd) 77 (Pa., Jan., 1949). Compare Bute v. Ill., 333 U.S. 640 (1948).

[198] Landon v. Warden, Maryland House of Correction, 61 A (2nd) 562 (Md., Oct., 1948); State *ex rel.* Eyer v. Warden, 59 A (2nd) 745 (Md., May, 1948).

[199] People v. Wilson, 78 NE (2nd) 514 (Ill., Mar., 1948); Chandler v. State, 83 NE (2nd) 189 (Ind., Jan., 1949). See also People v. Dixon, 81 NE (2nd) 257 (Ill., May, 1948), which held a licensed attorney unnecessary in a rape proceeding.

[200] Odom v. State, 37 So. (2nd) 300 (Miss., Nov., 1948).

[201] Penn v. Smyth, 49 SE (2nd) 600 (Va., Oct., 1948). And see, as to the power of counsel

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The prohibition against double jeopardy prevents the sentencing of defendants for the violation of a liquor control act where they had already been prosecuted under a different liquor control act providing a lesser penalty for essentially the same crime.[202] On the other hand, where a person's first conviction was for a felony which could have been punished by confinement in the penitentiary, but the court sentenced him to confinement in the state reformatory, a subsequent sentence under the statute providing for increased sentence for persistent violators is not invalid as violative of double jeopardy.[203] Similarly a first offender may be confined in the penitentiary even though the statute under which he was convicted provides for confinement in the men's reformatory.[204] Finally, double jeopardy does not prevent a state appeal and reversal of a lower court judgment on *habeas corpus* discharging one convicted of a crime.[205]

A sentence of 199 years for rape is not considered cruel and unusual punishment.[206] The imprisonment of an employer, who refused to pay wages when he knew that they were due and was able to pay them, does not fall under the constitutional prohibition against imprisonment for debt.[207]

Two cases concern the degree of definiteness of a statute to permit conviction in accordance with due process. One held that a statute prohibiting the performance of an "immoral" act was so vague as to be unconstitutional.[208] The other held a statute valid which required the seller of a motor vehicle to list separately finance and insurance charges among other things.[209]

6. *Procedural Requirements in Civil Suits.* The constitutional requirement of notice to affected persons was the subject of several decisions. It is a requirement that exists, whether the statute concerned so provides or not,[210] and it applies regardless of the form of action involved.[211] But granted the necessity for notice, the method of communication and the parties to whom communication

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to enter stipulations, People v. Walker, 201 P (2nd) 6 (Cal., Dec., 1948). See also People v. Hobbs, 79 NE (2nd) 202 (Ill., Mar., 1948), which states that evidence dehors the record on the appointment of counsel cannot be considered in a proceeding in error. See also Rogers v. Youngblood, 78 NE (2nd) 663 (Ind., Apr., 1948), stating that confinement in prison preventing the prisoner from conducting as his own attorney a replevin action for possession of his property does not deprive him of due process.

[202] State v. Holt, 194 P (2nd) 651 (Mont., May, 1948).

[203] Fry v. Hudspeth, 197 P (2nd) 945 (Kans., Oct., 1948).

[204] Cummings v. Lainson, 33 NW (2nd) 395 (La., Aug., 1948).

[205] Smyth v. Goodwin, 51 SE (2nd) 231 (Va., Jan., 1949).

[206] People v. Dixon, 81 NE (2nd) 257 (Ill., May, 1948).

[207] *Ex parte* Trombley, 193 P (2nd) 734 (Cal., May, 1948).

[208] State v. Vallery, 34 So (2nd) 329 (La., Feb., 1948).

[209] People v. Hughes, 33 NW (2nd) 86 (Mich., June, 1948).

[210] *In re* Wretlind, 33 NW (2nd) 161 (Minn., May, 1948). But see *contra*, Goodwin v. Sup. Ct., 201 P (2nd) 124 (Ariz., Dec., 1948).

[211] For example, the amendment of a zoning ordinance, De Latour v. Morrison, 34 So (2nd) 783 (La., Feb., 1948); or motions made in the course of a trial, Bindley v. Metrop. Life Ins. Co., 213 SW (2nd) 387 (Mo., Sept. 1948); Vichosky v. Boucher, 60 A (2nd) 381 (Pa., July, 1948). But compare Morse v. Eighth Dist. Ct., 195 P (2nd) 199 (Nev., June, 1948).

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is to be made are problems somewhat more difficult of solution. Registered mail may be used for actions against non-residents of the state if provided for by law.[212] Service by publication on non-residents or unknown defendants in tax foreclosure proceedings is also appropriate when provided for by law.[213] Further, agents[214] or officers of the state[215] may be served with notice of actions affecting foreign corporations, so long as in the latter case the officer is not the prosecutor of the action.[216] Likewise an adoption action is invalid if the presumptive father is not given notice and made a party.[217] Errors in the notice given, no matter how committed, invalidate the subsequent proceedings,[218] and may not be cured by subsequent legislation.[219] The requirement of an opportunity to be heard does not necessitate the reopening of a default judgment where the party adversely affected failed to take advantage of the statutory hearing provided and of which he had notice.[220] Where the protection of the individual and the public so requires, a mental patient may be committed to an institution before a hearing is given.[221]

The requisite fair hearing under due process means that the parties and their attorneys must be given free access to all papers in the case without requiring prior permission of the judge.[222] But procedural guarantees, such as a jury trial, may be waived and, if waived, may not later be attacked as inadequate.[223] And procedure in pending cases may be changed by a court rule fixing a day each month for argument on motions if the attorneys and litigants are notified of the change.[224]

[212] Kroll v. Nevada Ind. Corp., 191 P (2nd) 889 (Nev., Apr., 1948); *In re* Rogers' Estate, 190 P (2nd) 857 (Kan., Mar., 1948); Henderson v. Shell Oil Co., 208 SW (2nd) 863 (Tex., Mar., 1948). But see *In re* certain monies, 59 A (2nd) 154 (Pa., May, 1948), where notice was said to be unnecessary.

[213] Greenwold v. McCarthy, 83 NE (2nd) 491 (Ill., Jan., 1949); State v. Blevins, 48 SE (2nd) 174 (W. Va., Mar., 1948). See also McElroy v. McElroy, 198 P (2nd) 683 (Cal., Oct., 1948); City of Lakeland v. Chase Nat. Co., 32 So. (2nd) 833 (Fla., Dec., 1947); Thompson v. Dist., 193 P (2nd) 811 (Mont., June, 1948).

[214] Wein v. Crockett, 195 P (2nd) 222 (Utah, June, 1948). See also Grace et al. v. Proctor & Gamble Co., 57 A (2nd) 619 (N.H., Mar., 1948).

[215] Gillioz v. Kincannon, 214 SW (2nd) 212 (Ark., Oct., 1948).

[216] Baird-Gatzmer Corp v. Henry Clay Coal Min. Co., 50 SE (2nd) 673 (W. Va., Nov., 1948).

[217] Graham v. Lee, 37 So (2nd) 735 (Miss., Dec., 1948).

[218] North v. Town Real Estate Corp., 60 A (2nd) 665 (Md., July, 1948).

[219] Addison v. Fleenor, 196 P (2nd) 991 (Wyo., Aug., 1948).

[220] State v. Costner, 33 NW (2nd) 35 (Minn., June, 1948). Compare Danziger v. Shoob, 48 SE (2nd) 92 (Ga., May, 1948); Wolford v. Wolford, 200 P (2nd) 988 (Nev., Dec., 1948); Collector of Revenue v. Parcels of Land, 212 SW (2nd) 746 (Mo., July, 1948).

[221] *In re* Bryant, 38 So (2nd) 245 (La., Dec., 1948). So also with respect to taxation, Modern Barber Coll. v. Emp. Stab. Comm. 192 P (2nd) 916 (Cal., Apr., 1948).

[222] State *ex rel.* Hurd v. Davis, 82 NE (2nd) 82 (Ind., Nov., 1948).

[223] McGrath v. Lynch, 80 NE (2nd) 475 (Mass., July, 1948). See also Bartlebaugh v. Pa., 82 NE (2nd) 853 (Ohio, Dec., 1948).

[224] Heron v. Gaylor, 201 P (2nd) 366 (N.M., Dec., 1948); Curry v. Maynard, 83 NE (2nd) 782 (Ind., Feb., 1949).

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7. *Due Process and Substantive Rights.* Again this year a small group of cases presenting problems of some importance, but not otherwise assignable, are considered under this heading. They usually concern property or the right to maintain actions affecting property, and are usually considered in natural law terms apart from other guarantees of a more specific character. Thus it was held that no inherent right is violated by a statute eliminating alienation of affections as a ground for recovery of damages,[225] or denying recovery of damages for disfigurement not materially affecting employability.[226] Similarly, the possession of intoxicating liquor, although legal prior to and since the current constitution, and although unmentioned in it, may be prohibited by statute without violation of due process.[227] But if the property involved is considered useful by the court, the answer may be quite different. Thus the Florida court held that a statute passed in 1895 declaring certain enumerated businesses nuisances must be disregarded if the business man could show that by the use of modern equipment he could operate the forbidden activity without creating a nuisance.[228] The statute would merely serve to put the burden of proof on the owner. Laws permitting recovery from the estates of old-age pensioners of benefits received from the state do not deprive heirs or creditors of such persons of any inherent rights;[229] nor does an "open shop" law, even though non-union employees under it will receive benefits secured by the union at a cost to its members.[230] A similar grant of special rights was upheld in a case involving a statute giving to the wife as separate property all her earnings accumulated while living apart from her husband, although similar rights were not given the husband.[231] The imposition of a liability, however, will be strictly construed. Thus an employer cannot be foreclosed from challenging the constitutionality of a workman's compensation law merely because he has accepted the benefits of the act.[232]

In only two cases was legislation held to impair such inherent property rights. In one it was held that when a city annexes a sanitation district, it may not assume liability for the debts of the district when such obligation will be discharged from general funds, while other residents of the city pay special assess-

[225] Rotwein v. Gersten, 36 So (2nd) 419 (Fla., July, 1948). See also Taylor v. Keefe, 56 A (2nd) 768 (Conn., Nov., 1947); Hansen v. Isaac, 33 NW (2nd) 561 (S.D., Aug., 1948).

[226] Breimhorst v. Beckman, 35 NW (2nd) 719 (Minn., Feb., 1949).

[227] Stepp v. State, 33 So (2nd) 307 (Miss., Jan., 1948); and with respect to the revocations of a liquor license, see Pason v. City of Shakopee, 32 NW (2nd) 603 (Minn., May, 1948).

[228] Cohen v. State, 37 So (2nd) 700 (Fla., Sept., 1948). See also O'Connor v. City of Moscow, 202 P (2nd) 401 (Idaho, Jan., 1949).

[229] Boone Co. Bd. v. Myhre, 32 NW (2nd) 262 (Neb., May, 1948).

[230] Mascari v. Int. Broth., 209 SW (2nd) 756, and 215 SW (2nd) 799 (Tenn., Apr., 1948).

[231] Loveridge v. Loveridge, 198 P (2nd) 444 (N.M., Sept., 1948).

[232] Stone v. State, 34 So (2nd) 305 (Fla., Mar., 1948). Likewise the issue of constitutionality must be determined before the merit of the case to minimize litigation costs, Werner v. Mil. Solvay Coke Co., 31 NW (2nd) 605 (Wis., Mar., 1948).

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ments for the same services.[233] The other case held unconstitutional an amendment to a workman's compensation act which required employees exposed to dust to submit themselves to periodic complete physical examinations to remain eligible for benefits.[234]

8. *Eminent Domain.* Again this year this section presents a relatively small number of cases. Most of them concern the questions of whether the taking is for a public purpose and whether a given act takes property. With respect to the latter, it was held that the regulation of parking by the installation of meters did not take the property of adjoining landowners, since restriction of access and use of their land was only an incidental effect of the measure.[235] The same result is reached in a decision denying compensation to a filling-station owner for loss of business due to a temporary street repair job,[236] and with respect to a claim for injuries caused accidentally during a state agricultural inspection.[237] An analogous decision holds that where the land upon which a business is being conducted is taken, the owner does not have a constitutional right to compensation for loss of business, good will, or profits.[238] The contrary result was reached in another state where it was held that if the utility commission orders special street-car rates for school children, it must adjust other rates to compensate any loss, and cannot even delay long enough to determine from experience the amount of the loss.[239] Likewise the dedication of certain property to highway uses by so designating it on an official map must be followed by compensation, since the owner's use of the land is limited by that act.[240]

Only two cases turn on the question of the use to which the property taken is to be put. Property needed to establish a subsurface bus terminal is destined for a public purpose.[241] Further, hospital property transferred from a city to a county under terms of a contract does not limit the power of eminent domain so that the price may be litigated without regard to the contract's terms.[242]

9. *Retrospective Acts.* The ban against retrospective acts is argued quite

[233] Sanitation Dist. v. City of Louisville, 213 SW (2nd) 995 (Ky., Oct., 1948).

[234] Michigan, etc., Bd. v. Enterprise Foundry Co., 32 NW (2nd) 515 (Mich., May, 1948). But see Masich v. U.S. Smelting & Ref. Co., 191 P (2nd) 612 (Utah, Mar., 1948).

[235] City of Decatur v. Robinson, 36 So (2nd) 673 (Ala., June, 1948). Compare Christenson v. Wikan, 35 NW (2nd) 329 (Wis., Dec., 1948), concerning easements as property rights; and Elkins-Sawyers Co. v. Moniteau Co., 209 SW (2nd) 127 (Mo., Mar., 1948), on the public use of court records bound at private expense.

[236] Anselino v. Cox, 60 A (2nd) 767 (Conn., July, 1948).

[237] Angelle v. State, 34 So (2nd) 321 (La., Jan., 1948).

[238] State v. Stabb, 79 NE (2nd) 392 (Ind., May, 1948).

[239] Capital Transit v. Bosley, 62 A (2nd) 267 (Md., Nov., 1948).

[240] Grosso v. Bd. of Adj., 61 A (2nd) 167 (N.J., Sept., 1948). See regarding zoning, City of St. Louis v. Friedman, 216 SW (2nd) 475 (Mo., Jan., 1949); O'Connor v. City of Moscow, 202 P (2nd) 401 (Idaho, Jan., 1949).

[241] Cleveland v. City of Detroit, 33 NW (2nd) 747 (Mich., Sept., 1948).

[242] Bradley v. City Council, 46 SE (2nd) 291 (S.C., Feb., 1948). See also on the right to sue, Adams v. City of Macon, 50 SE (2nd) 598 (Ga., Nov., 1948).

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frequently this year, but exclusively as it concerns contractual obligations. The litigated questions include what is a contractual right, when does it become vested, and what is the retroactive change forbidden.

Changes which do not affect substantive rights, as distinct from procedural rights, are not invalid. Such a procedural change may include the alteration of the method of determining the amount of indebtedness due on a mortgage after foreclosure proceedings have been instituted.[243] But where foreclosure has taken place, a statutory right of redemption existing in the mortgagor is a personal right which dies with him and cannot be revived in his heirs by legislation passed after his death.[244] Where an estate tax is levied at certain rates and then the rates are increased, the new rate may be applied against an estate put in trust at a time when the old rate was in effect, since the privilege of transfer taxed was exercised not at the time of establishing the trust but at the time of death.[245] But a tax exemption, once granted, is not revocable,[246] as is also a right granted in articles of incorporation.[247] Rights, however, based upon a line of legal decisions are the equivalent of statutory rights deserving of protection.[248]

Most of the cases concern the power of governments to change the terms of rights and privileges granted by them to private individuals and corporations. It is a difficult line to draw between public sovereignty and private rights because of the variety of contexts involved. One area of such controversy is zoning. Where a building permit has been issued in violation of existing zoning laws, no rights are acquired.[249] While zoning laws may not be applied to remove already existing nonconforming buildings, if such a building, as for example a bar in a residential district, is transformed into another type of nonconforming building such as a dance hall, the building is not protected against application of the law.[250] Further, the old use having been abandoned by the change, any subsequent use must be a conforming one. Such rights to a nonconforming use

[243] Petty v. Clark, 192 P (2nd) 589 (Utah, Apr., 1948); Swanson v. Flynn, 31 NW (2nd) 320 (N.D., Feb., 1948).

[244] Land v. Cooper, 34 So (2nd) 313 (Ala., Feb., 1948). But a right to defend in condemnation proceedings survives death, Louisville & Nash. R. Co. v. Mayhew, 211 SW (2nd) 675 (Ky., May, 1948).

[245] *In re* Kohrs' Estate, 199 P (2nd) 857 (Mont., Nov., 1948); *In re* Bass' Estate, 190 P (2nd) 800 (Okla., Mar., 1948). See also Salmon v. Denhart Elevators, 30 NW (2nd) 644 (S.D., Jan., 1948); *in re* Stadfeld's Estate, 58 A (2nd) 478 (Pa., Apr., 1948).

[246] New Orphans' Asylum v. Bd. of Tax App., 80 NE (2nd) 761 (Ohio, July, 1948).

[247] State v. Perham, 191 P (2nd) 689 (Wash., Mar., 1948); Schaffner v. Stand. Boiler & Plate Iron Co., 83 NE (2nd) 192 (Ohio, Dec., 1948).

[248] Skalitsky v. Cons. Badger Co-op., 31 NW (2nd) 153 (Wis., Feb., 1948); but not a right included in a license, Geo. Benz Sons v. Ericson, 34 NW (2nd) 725 (Minn., July, 1948). See also Bond Bros. v. Sewer Dist., 211 SW (2nd) 867 (Ky., Feb., 1948).

[249] Geordano v. Dumont, 61 A (2nd) 245 (N.J., Sept., 1948). See also Beeman v. Bd. of Pharm., 35 NW (2nd) 354 (Mich., Jan., 1949).

[250] Brown v. Gambrel, 213 SW (2nd) 931 (Mo., Sept., 1948); City of Richmond Hts. v. Richmond Hts., etc., Ass'n., 213 SW (2nd) 479 (Mo., July, 1948).

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accrue at the time of purchase and cannot be destroyed by legislation aimed at a single individual for a purpose which the court does not approve.[251] Nonconforming use is not entitled to protection where it is established in violation of law, and where the law is then inadvertently repealed and promptly reenacted.[252]

Another substantial area of controversy concerns public bonds and taxation. Rights of recovery against property upon which taxes have not been paid given by statute to public bondholders is a vested right which may not be impaired by subsequent legislation.[253] But a statutory limitation on the time within which enforcement proceedings may be brought may be imposed after the bonds are issued.[254] And the bondholder does not have standing to challenge a reduction in the penalties imposed on the taxpayer.[255]

Several cases in this group concern rights and benefits for public employees. One decision holds that the right of such an employee to withdraw money from a retirement fund for other than retirement purposes may not be penalized by legislation passed subsequent to the contributions made to the fund.[256] But where no contributions have been made by the employee, he has no vested right to the continuance of the retirement allowance.[257] The third case holds that an employee does not acquire such a vested right that the tenure system in effect at the time of his employment may not be abolished.[258] The same conclusion is reached elsewhere with respect to the abolition of a plan of vacations with pay.[259] One case upholds a rent control act of the state in its application to premises leased under a contract made prior to the statute.[260]

III. FEDERALISM

There is a small group of cases this year which raise some special problems of the federal relationship. These problems fall into two groups. First, with reference to the relations between states, the Michigan court held that a statute forbidding the disclosure of information gathered in the administration of certain tax laws would not operate to prevent the exchange of information on a reciprocal basis with other states.[261] The information involved was a list

[251] Lower Merion Twp. v. Frankel, 57 A (2nd) 900 (Pa., Mar., 1948). See also Northwest Merchants Terminal v. O'Rourke, 60 A (2nd) 743 (Md., July, 1948); State *ex rel* George v. Hull, 199 P (2nd) 832 (Wyo., Nov., 1948); Trans-Oceanic Oil Corp. v. City of Santa Barbara, 199 P (2nd) 148 (Cal., June, 1948).

[252] Wyoming Twp v. Herweyer, 33 NW (2nd) 93 (Mich., June, 1948).

[253] Zilky v. Carter, 81 NE (2nd) 597 (Ind., Oct., 1948).

[254] Baccus v. Banks, 192 P (2nd) 683 (Okla., Jan., 1948); Baccus v. Pankratz, 194 P (2nd) 880 (Okla., June, 1948).

[255] City of Mobile v. Merchants Nat'l Bank, 33 So (2nd) 457 (Ala., Jan., 1948).

[256] Clarke v. Ireland, 199 P (2nd) 965 (Mont., Nov., 1948).

[257] Brown v. Highland, 30 NW (2nd) 798 (Mich., Feb., 1948).

[258] Crawford v. Sadler, 34 So (2nd) 38 (Fla., Feb., 1948). See also People v. Deatherage, 81 NE (2nd) 581 (Ill., Sept., 1948).

[259] Halek v. City of St. Paul, 35 NW (2nd) 705 (Minn., Jan., 1949).

[260] Court Square Bldg. v. City of New York, 83 NE (2nd) 843 (N.Y., Jan., 1949).

[261] Roberts Tobacco Co. v. Dept. of Rev., 34 NW (2nd) 54 (Mich., Oct., 1948).

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of customers which it was claimed constituted a valuable trade secret, protected by law. The court rejected the allegation of impairment of a property right, since the plaintiff did not allege that this list would become available to his competitors, and to prevent the latter was the sole purpose of the statutory restriction.

The second and more important group of cases concerns relations between the states and the national government. Because of the better fact-gathering facilities of the federal government, states with increasing frequency incorporate the results of these inquiries into their governmental activities. Thus New Mexico has a pattern for the establishment of conservation districts which includes reference to the classification of such lands by the federal Secretary of the Interior. This plan was upheld against a challenge of illegal delegation of legislative power, since the local board was required only to give "due consideration" to such classification at the hearing to determine the lands to be benefited.[262] Further, it was held that the local board might admit in evidence certain general reports of the U.S. Bureau of Reclamation. In this same group is a New York decision which holds that a constitutional amendment granting a civil service preference to disabled veterans as certified by the U.S. Veterans Administration granted the preference to those eligible for such certification under the rules in force at the time the amendment was passed.[263] Since at that time the Veterans Administration certified a disability only if it was in excess of 10 per cent, the subsequent change in its rules to permit certification of a smaller disability did not operate to extend the preference to those so certified.

Closely associated is a decision of the Massachusetts court holding that the difficulties in determining state power over employees engaged in both inter- and intra-state commerce justify the exclusion of such groups from benefits of the workmen's compensation laws.[264] A somewhat more complicated situation arose in Arizona. Tucson instituted action under a state law to convert a local gas and light company to public ownership. The statute provides that the value for condemnation purposes of such property is its value as of the date of summons. This feature as it affected certain improvements made since that date was challenged by the utility in a federal district court, which upheld the statute. At this point, the corporation commission, on the request of the Eleventh Naval District, ordered the utility to extend facilities. The state supreme court agreed that the commission had no power to rule on the constitutionality of the condemnation law, and so was required to order the extension. It held that the order was valid, but that the utility must be compensated for the extensions, the statute and the decision of the district court to the contrary notwithstanding.[265]

[262] *In re* Arch Hurley Cons. Dist., 191 P (2nd) 338 (N.M., Jan., 1948).
[263] Carey v. Morton, 79 NE (2nd) 442 (N.Y., Apr., 1948).
[264] Price v. Ry. Exp. Agency, 78 NE (2nd) 13 (Mass., Mar., 1948).
[265] Ariz. Corp. Comm. v. Tucson, etc., Co., 189 P (2nd) 907 (Ariz., Feb., 1948).

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INSTRUCTION AND RESEARCH

AUDIO-VISUAL MEDIA AND POLITICAL SCIENCE TEACHING

RUTH G. WEINTRAUB
Hunter College

In 1940, a total of 1,500,000 students (16 per cent of the 18–21-year-olds) were in attendance in American colleges.[1] This was before the advent of G.I. education, which brought the figure up to 2,350,000 (24 per cent of the 18–21-year-olds).

These vast numbers of students, presenting a challenge to the present generation of college teachers, are of particular portent to the political scientist. The latter, relying largely in the past on his own interpretation of the subject-matter based upon standard texts as "the method" for courses in government, is faced with the problem of mass education; as a result, some of the standard teaching techniques are ineffectual. Under these conditions, to what extent can technological changes in mass communication media which have for the most part been ignored at the college level make a contribution?

Audio-visual materials are available and in standard use in medical schools; teaching operative procedures from a televised performance was a regular part of the last medical convention at Atlantic City. Science equipment consisting of laboratories, museums, Balopticans, slide projectors, and motion picture machines are standard for science departments. Even college budget officers, immune to faculty pressure of various types, are sensitive to the demands of science departments for equipment. Such sensitivity, however, does not apply to the social sciences; budget officers still need to be convinced that social science departments have equipment requirements, beyond an allotment to the library for new books.

The timidity of the political science professor to take on the battle of the budget is due to a variety of reasons. Generally he is uninformed about the new materials which are available. In addition, in the last twenty years, relatively few articles have appeared in the *American Political Science Review* devoted to questions concerned with some aspect of newer teaching methodology; only approximately one every three years.[2]

Most important, however, many of the visual materials which have been made for the social sciences have been geared below the college level. There is some feeling that until the visual aids are perfected for college consumption, teachers are ill advised to make requests for equipment. On the other hand, commercial producers in the United States naturally argue that until they have some assurance that there is a college market for audio-visual media, they

[1] President's Committee on Higher Education, *Higher Education for American Democracy* (1947), VI, p. 19.

[2] See Claude E. Hawley, "Toward Improved Teaching of Government," *Higher Education*, Vol. V, No. 18, pp. 209–211 (May 15, 1949).

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can ill afford to produce for this market alone. One commercial firm is in the process of completing ten filmstrips on American government correlated with a specific political science text and designed particularly for college audiences.[3] While such filmstrips have been made in the past to accompany college texts in the natural sciences, this is the first such experiment at the college level for political science.

Coronet Films has produced a series of political science films designed to catch both the high school and college population, and consequently these films are for the most part too unsophisticated for college audiences. This company called on members of the American Political Science Association to act as consultants for individual films.

Great Britain has made much more progress in developing the type of adult film which makes a serious contribution to the literature of political science. These films are usually made by private companies with a government subsidy at the request of a Ministry. Many of these are available for distribution in the United States through regional offices of the British Information Services and through many private sources.[4]

Political Science Department Inventories. The Committee on the Advancement of Political Science Teaching of the American Political Science Association, with the coöperation of the Office of Education of the Federal Security Agency, is in the process of asking departments of political science throughout the United States to take stock of their offerings and to report on many phases of their work, including their use of audio-visual materials.[5] Incomplete returns from 148 institutions which offer political science majors suggest a few tentative generalizations on the use of audio-visual aids. The following are answers to specific questions:

Has your department made any teaching aids? Forty of the 148 institutions which answered the questionnaire thus far said they were making some of their own teaching aids; of these, 28 reported that they constructed their own charts, and six had made recordings which they were using. Beloit College wrote that it makes wire recordings of radio broadcasts and interviews with government officials. Tape recordings of party conventions were made and used in classes in the Colleges of the Seneca. The University of Michigan and the State University of Iowa reported making their own films.[6] The other 108 institutions either said that they made no teaching aids or ignored the question altogether.

What titles of films have been found to be especially useful? Twenty-seven of the

[3] McGraw-Hill Co. It is expected that these filmstrips will be ready for distribution by November, 1949.

[4] British Information Services: New York, Chicago, Washington, San Francisco.

[5] Marshall E. Dimock (chairman), president of the Shinner Political Economy Research Foundation; Harold M. Dorr, University of Michigan; James W. Fesler, University of North Carolina; Claude E. Hawley, Office of Education, Federal Security Agency; E. Allen Helms, Ohio State University; V. O. Key Jr., Yale University; Ruth G. Weintraub, Hunter College; and Howard White, Miami University.

[6] Also note "Special Report: Film Production in U. S. Colleges and Universities," *See and Hear*, IV (Apr., 1949).

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148 institutions forwarded the names of films or filmstrips which they had found especially useful in the teaching of political science; the 47 titles below are listed by these institutions.[7] Contrary to expectation, there appears to be no consensus on the films designated as useful. For example, only eight colleges reported using *"The River,"* four used *"General Election,"* and only one or at the most two used each of the other films.

What recordings have been used? Twenty institutions indicated that they were using recordings in the classroom. Eleven of these used a recording of the Republican National Convention of 1948, seven the commercial *"I Can Hear It Now,"* a series of recordings of speeches which made history during the New Deal period and the crisis of World War II; 128 institutions either ignored the question or reported that they were using no such materials.

Are projection equipment and space readily available? Apparently there is projection equipment available for use in approximately 70 per cent of the institutions reporting; over one-half of the colleges indicate that both equipment and adequate space are available should the political science department wish to use them. A little under 40 per cent of the institutions reporting say that they use audio-visual aids in one or more political science courses; charts are the most frequently mentioned item. Aside from the use of charts, there would appear to be only spasmodic use of the other audio-visual materials.

In general, the lack of use of audio-visual aids seems to be due to a dearth of information about materials, to a feeling that these are teaching gadgets which have no place at the college level, to the belief that it takes a lot of labor to get the materials into the classroom, and finally to the feeling that it is not worth the effort involved.

A College Program. Since data on visual aids at the college level are meager, the Committee on the Advancement of Teaching Political Science decided that even the pedestrian putting down of addresses, rates, and descriptions of equipment seemed a useful professional service. Thus, as a preliminary footnote to an anticipated report, the writer was asked to give her own experience in facilitating the use and integration of audio-visual materials in the teaching of political science.

[7] Americans All; The American Way; Arteries of the City; Atom Bomb-Test—Bikini Island; Causes and Immediate Effects of the First World War; Causes of the Second World War; The City; Control of Atomic Energy; Declaration of Independence; Democracy; Despotism; The Economic and Social Council, Foundation for Peace; English Criminal Justice; Everyman's Empire; General Election; Health and Cycle of Water; Highlights of the United Nations Year (1947–48); How a Bill Becomes a Law; In Common Cause; Indonesian Story; International Control of Atomic Energy; Juvenile Delinquency; Our Louisiana Purchase; Meet Your Federal Government; Now the Peace; One World—or None; One World Story; Our Bill of Rights; Our Constitution; Our Monroe Doctrine; Our National Government; Pennsylvania Local Government in Action; Peoples of the Soviet Union; The Plow that Broke the Plains; Powers of Congress; Power on the Land; Public Opinion; Rise and Fall of the Nazi Empire; Serving Other People; Shrine of a Nation, Westminster Abbey; TVA; Versailles and After; We Are Brothers; Woodrow Wilson; World of Plenty; You, the People.

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At Hunter College, a small committee, made up of a representative from each of the social sciences, agreed to pool its resources and made a joint budget request. Expenditures involved two 16mm projection machines,[8] a kodascope for the projection of filmstrips,[9] two projection screens,[10] dark shades for classrooms, funds for subscriptions to basic magazines and guides,[11] and a small sum for film rentals, for the purchase of filmstrips, for the manufacture of slides, and for the raw materials used in making charts and graphs. Film equipment for the making of slides was borrowed from the better equipped science departments.

[8] Amprosound Premier "20," $493.50, Ampro Corporation, 545 Fifth Avenue, New York, N.Y.

Bell and Howell Filmsound "185," $495.00–595.00, Bell and Howell, 7100 McCormick Road, Chicago, Ill.

Both these machines have proved very satisfactory in operation. Other standard projectors are the RCA "400," $541.50, and the NatCo "3030"—$289.50.

[9] S.V.E. Tri-purpose Slide Projector, $80.00, Society for Visual Education, 2067 Broadway, New York City. Other standard machines are: Bell and Howell Duo-Master, $130.00, and Ampro Corp. 30-D, $86.00.

[10] Radiant Manufacturing Corp., 2627 W. Roosevelt Road, Chicago, Ill., $18.50-up, depending on size and type of screen. Da-Lite Screen Co., Inc., 2711-23 N. Crawford Avenue, Chicago, Ill., $15.75-up, depending on size and type of screen.

[11] *Selected Educational Motion Pictures*, American Council on Education, 1942. (Detailed content descriptions, the full title, length, and sources are given for nearly five hundred 16mm films.)

Audio-Visual Committee of the California School Supervisors Association, *Sources of Audio-Visual Materials and Equipment* (mimeo), Sacramento: California State Department of Education, 1948. (Sources for 16mm motion pictures, filmstrips, and slides; also for catalogues, periodicals, equipment, and charts.)

Educational Film Guide, New York, H. W. Wilson Co., 1948, $4.00 per year. (Most complete catalogue of educational films available. Gives producer, price, level of film, and description. Films are classified for easy reference by title or subject-matter.)

Educational Screen, Pontiac, Ill., Educational Screen Inc., $3.00 per year. (Magazine devoted to audio-visual materials. Teacher evaluation of new films, literature on visual instruction.)

Federal Security Agency, *A Partial List of 16mm Film Libraries*, Washington: Federal Security Agency, Office of Education, Visual Aids Section, Apr., 1948.

Filmstrip Guide, New York, H. W. Wilson Co., 1948. $3.00 per year. (This annual catalogue does for filmstrips what the *Educational Film Guide* does for films.)

Library of Congress, *Guide to United States Motion Pictures*, Washington, D.C., U.S. Government Printing Office, June, 1947, I. (Titles, length, and date of films produced by various departments and agencies of the government.)

William H. Hartley, *Selected Films for American History and Problems*, New York, Teachers College, 1940. (Handbook for use in American history, problems of democracy, civics, geography, and fusion courses. Gives directions for obtaining, evaluating, and utilizing educational films. Also gives a catalogue of most useful films in these fields.)

1000 and One—Blue Book of Non-Theatrical Films, Pontiac, Ill., Educational Screen Inc., $1.00 per year. (Valuable for the location of film sources.)

United Nations Department of Public Information, Films and Visual Information Division, *United Nations 16mm Films and Filmstrips*, Lake Success, United Nations. (Films and filmstrips produced by the United Nations Department of Public Information.)

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The only request for personnel was for a laboratory assistant to service the program for all interested faculty members of the various social science departments. The first job of the assistant was to compile a card index of all available films and filmstrips for department members to consult. Catalogues were secured from the major film sources throughout the United States (Appendix I). Next, previews were arranged at which groups of films were shown to staff members. If films are secured on a rental basis, or if they are loaned free of charge, they have to be booked in advance; and thus instructors have to be able to say with some definiteness on what particular day they will require the films. At first, this caused some consternation, but gradually staff members adjusted to advance planning. Several times a semester the laboratory assistant sends a list of new films to departmental members. If they are at all interested in the new listing, they request previews. All the unattractive but necessary details of booking films, having them available for the hour the professor wants them, and running the machine is handled by the laboratory assistant or by undergraduates. Each semester, more use is being made of the services of this interdepartmental committee by staff members in the several social science departments, and a consensus is developing as to the most useful films or filmstrips. As funds become available, the best are gradually being purchased.

At present it appears that the most useful films for political science are those which come from British sources. If one were to single out any one film for review, one could hardly do better than select "*General Election*" for special mention.

This film, a documentary photographed in the constituency of Kettering, England, during the last general election, begins with the formal proposal of the candidates and ends after the ballots are counted and the member is declared elected. During the 20 minutes that the film runs, campaign headquarters are visited, campaign literature is analyzed, and candidates are heard talking to their constituents on the issues. This film furnishes excellent setting for a discussion contrasting British and American campaign techniques. Comparable material would normally require a two-hour lecture—and then would undoubtedly not be as vividly done.

An American-made film which has been used effectively in courses on legislation and in state and local government carries the title of "*State Legislature.*" The Wisconsin state legislature is used as a backdrop for a case study; the story of a bill is told from its pre-natal history through passage and finally until it is tested in the courts. A committee hearing, the lobby in action, and the operation of machine-voting are effectively portrayed. This film is an excellent substitute for classes which are too far away from the state capitol to make a visit practicable.

Other films which have been used in this institution in political science courses are listed in Appendix II, together with descriptive data. In addition, fairly detailed information has been added about sources, rentals, and purchase costs. This information is included because even incomplete returns from the

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Committee's questionnaire indicate that there is considerable haziness about the mere mechanics of getting films.

Summary. It would seem logical that if these bibliographical items arouse some interest, the *American Political Science Review* might consider adding to its "Recent Publications of Political Interest" a periodic report devoted to an evaluation of new films, filmstrips, and other audio-visual aids.

As has been noted before in the pages of the *Review*, "in the long run, successful use of films in political science will depend upon the production of films specifically to meet our needs; and this is an undertaking which the American Political Science Association might well sponsor."[12] Short of that, films and filmstrips can be expected from the various university centers engaged in film production, from British sources, from the United Nations film division, and from commercial companies in this country, as soon as a college market seems at all assured.

There is no suggestion from any source that the political science teacher spotlight methodology and thus lessen his zeal for or concentration on subject-matter. On the other hand, he ought not to ignore the developments in improved methods of communication. They are not being ignored by his colleagues in the pure sciences. Moreover, in political science the improved media permit large numbers of students to see and hear their government in action. While no one would argue that it would not be more profitable to assign each student in a course in legislation to assist the legislator from his district, the realities make this impossible. Good audio-visual materials should prove a valuable substitute.

APPENDIX I

List of Major 16mm Film Libraries in the United States

American Museum of Natural History
79th Street & Central Park West
New York, N. Y.

Association Films
35 West 45th Street
New York, N. Y.

Australian News and Information Service
630 Fifth Avenue
New York, N. Y.

Bertrum Willoughby Pictures
1600 Broadway
New York, N. Y.

British Information Service
30 Rockefeller Plaza
New York, N. Y.

Brigham Young University
Bureau of Audio-Visual Instruction
Provo, Utah

Boston University
Division of Motion Pictures and Visual Aids
84 Exeter Street
Boston 16, Mass.

Brandon Films
1600 Broadway
New York, N. Y.

City College
Audio-Visual Center
17 Lexington Avenue
New York, N. Y.

[12] John D. Millett, *"The Use of Visual Aids in Political Science Teaching,"* in this REVIEW, June, 1947, p. 526.

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Encyclopedia Britannica Films
450 West 56th Street
New York, N. Y.

Illinois Institute of Technology
Department of Visual Education
3300 Federal Street
Chicago 16, Ill.

Indiana University
Audio-Visual Center
Bloomington, Ind.

Iowa State College
Visual Instruction Service
Ames, Iowa

Louisiana State University
Agricultural Extension Service
Baton Rouge, La.

Mississippi State Department of Education
Audio-Visual Education
Jackson, Miss.

Museum of Modern Art
11 West 53rd Street
New York, N. Y.

National Film Board of Canada
620 Fifth Avenue
New York, N. Y.

New Jersey Department of Education
State Museum
State House Annex
Trenton 7, N. J.

New York University
Film Library
26 Washington Place
New York, N. Y.

Nu-Art Films
145 West 45th Street
New York, N. Y.

Ohio State Department of Education
Ohio Slide and Film Exchange
Columbus, Ohio

Ohio State University
Agricultural Extension Service
Columbus, Ohio

Oregon State System of Higher Education
Department of Visual Instruction
Corvallis, Ore.

Pennsylvania College for Women
PCW Film Service
Pittsburgh, Pa.

Pennsylvania State College
Audio-Visual Aids Library
State College, Pa.

Princeton Films Center
Princeton, N. J.

State College of Washington
Bureau of Visual Teaching
Pullman, Wash.

State of New York
Chamber of Commerce
Albany, N. Y.

State University of Iowa
Bureau of Visual Instruction
Iowa City, Iowa

Syracuse University
Education Film Library
Syracuse, N. Y.

Texas State Dept. of Education
Radio and Visual Education Div.
Austin, Tex.

University of California
University Extension
405 Hilgard Avenue
Los Angeles 24, Calif.

University of Florida
General Extension Division
Dept. of Visual Instruction
Gainesville, Fla.

University of Georgia
Division of General Extension
Old College
Athens, Ga.

University of Hawaii
Agricultural Extension Service
Honolulu, Hawaii

University of Idaho
Agricultural Extension Division
Film Library
Boise, Ida.

University of Illinois
Visual Aids Service
Champaign, Ill.

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University of Kansas
University Extension
Bureau of Visual Instruction
Lawrence, Kan.

University of Kentucky
Bureau of Audio-Visual Materials
Lexington, Ky.

University of Michigan
Extension Service
Audio-Visual Education Center
Ann Arbor, Mich.

University of Minnesota
Audio-Visual Extension Service
139 TSF
Minneapolis, Minn.

University of Missouri
Extension Service
Visual Education Dept.
Columbia, Mo.

University of Nebraska
University Extension Division
Bureau of Audio-Visual Aids
Lincoln, Neb.

University of Nevada
Agricultural Extension Division
Reno, Nev.

University of New Mexico
Extension Division
Albuquerque, N. M.

University of North Carolina
Bureau of Visual Instruction
Chapel Hill, N. C.

University of Oklahoma
Extension Division
Visual Education Dept.
Norman, Okla.

University of Texas
Extension Division
Visual Instruction Bureau
Austin, Tex.

University of Tennessee
Division of University Extension
Knoxville, Tenn.

University of Vermont
Robert Hull Fleming Museum
Vermont Film Library
Burlington, Vt.

University of Virginia
Extension Division
Bureau of Teaching Materials
Charlottesville, Va.

University of Wisconsin
Bureau of Visual Instruction
Madison, Wis.

University of Wyoming
Film Library
Laramie, Wyo.

Utah State Agricultural College
Extension Division
Visual Education Department
Logan, Utah

West Virginia University Library
Audio-Visual Aids Dept.
Morgantown, W. Va.

Viking Fund
14 East 71st Street
New York, N. Y.

APPENDIX II

Films Used in Political Science Courses at Hunter College

1. *"The Proud City"*

City planning as practiced in London after the "blitz" is the theme of this unusual documentary. The planning agency explores what can be done for postwar London by decentralization and recentralization.

Producer: Greenpark for the Ministry of Information
Source: British Information Service
Time: 26 min.
Rental Cost: $3.75
Sale Price: $56.25

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2. *"General Election"*

Described above.

Producer: Verityfilms, produced for the British Council
Sources: British Information Service ($2.50); New York University Film Library ($4.00); Indiana University ($2.50)
Time: 20 min.
Sale Price: $37.50

3. *"Children of The City"*

The administration of justice in Scotland as it concerns the handling of the youthful offender. Three urban juvenile delinquents are studied and are accorded differentiated treatment by public and private agencies.

Producer: Rotha Films for the Scottish Education Dept. and Scottish Home Dept.
Sources: British Information Service ($3.75); New York University Film Library ($6.00); Indiana University ($3.75); Association Films ($5.00)
Time: 30 min.
Sale Price: $57.00

4. *"English Criminal Justice"*

Tells the story of British court procedure from the informal handling of a simple petty session case with citizen judges participating to a murder trial at Old Bailey. The actual courtroom scenes have been filmed, and emphasis is placed on the meticulous concern for the protection of the rights of individuals.

Producer: Greenpark for the British Council
Sources: British Information Service; Indiana University
Time: 22 min.
Rental Price: $2.50
Sale Price: $37.50

5. *"German Propaganda Films, 1934–40"*

Much of this has been used in the U.S. Government films recapitulating the events leading up to the war. Useful for courses in propaganda analysis or in courses on comparative political institutions.

Source: Museum of Modern Art
Time: About 110 min.
Rental Cost: $10 per program

6. *"State Legislature"*

Described above.

Producer: Academy Films
Source: Indiana University
Time: 22 min.
Rental Price: $3.00—black and white
$5.75—color

7. *"Pennsylvania Local Government In Action"*

Made on location throughout Pennsylvania, this film highlights the pressing problems of modern local government in the United States. The film was made by Pennsylvania State College at the request of the state government.

Producer: Penn. State College
Source: Penn. State College
Time: 22 min.
Rental Cost: $1.00 service charge

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8. *"How We Elect Our Representatives"*

This film explains the election system. It visualizes the processes of registration, primaries, voting, and method of counting ballots. Useful if shown together with the British film *"General Election."*

Producer: Coronet Films
Sources: Bertrum Willoughby Pictures; Indiana University
Time: 10 min.
Rental Cost: $1.50—black & white
$2.50—color
Sale Price: $45.00—black & white
$90.00—color

9. *"The City"*

The turmoil of the planless city and the color and spaciousness of the small planned community are contrasted.

Producer: American Documentary Films Inc.
Sources: Museum of Modern Art; Brandon Films
Time: 30 min.
Rental Price: $4.50
No sale—lease only

10. *"T.V.A."*

Effects of T.V.A. on the people and industry of the area.

Producer: T.V.A.
Source: Indiana University
Time: 19 min.
Rental Price: $2.45

11. *"The River"*

Tells the story of the Mississippi river, what it has done and what man has done to it. Powerful conservation plea.

Producer: Castle Films for the U.S. Dept. of Agriculture
Source: American Museum of Natural History
Time: 32 min.
Rental Price: $2.00
Sale Price: $38.72

12. *"Patterns For Peace"*

Clear guide to the structure and functions of the various segments of the United Nations organization.

Producer: Crown Film Unit
Sources: British Information Service; Nu-Art Films
Time: 15 min.
Rental Price: $2.50
Sale Price: $44.00

13. *"Now The Peace"*

Blueprint of the United Nations Organization

Producer: National Film Bd. of Canada
Sources: Brandon Films; National Film Board of Canada
Time: 20 min.
Rental Price: $2.50
Sale Price: $50.00

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14. *"Gallup Poll"*

Dr. Gallup is presented and is permitted to explain the objectives and advantages of poll-taking. His sampling method is portrayed. Material dated.

Producer: Columbia Pictures Corp.
Source: American Museum of Natural History
Time: 15 min.
Rental Cost: $2.00

Filmstrips

1. *"Economic and Social Council—Foundation For Peace"*

Photographs and charts describing the organization of the Economic and Social Council of the United Nations. Deals with the commissions, sub-commissions, and specialized agencies and their relationship to the Economic and Social Council.

Producer: UN
Source: C.C.N.Y.
Time: 69 frames
Price: $0.50 to rent

2. *"United Nations at Work—The Secretariat"*

Deals primarily with the eight departments of the Secretariat and their relationship to the major organs of the United Nations.

Producer: UN
Source: C.C.N.Y.
Time: 90 frames
Price: $0.50 to rent

3. *"The Charter's Organization"*

Describes the organization of the United Nations and the specific functions of the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice, and the Secretariat.

Producer: Young America Films
Source: Young America Films
Time: 38 frames
Sale Price: $3.50

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Managing Editorship of the Review. The Committee on the *American Political Science Review*, of which Professor V. O. Key, Jr., now of Yale University, is chairman, submitted a unanimous report on May 5, 1949. After a thorough canvass of the situation created by the impending retirement of Professor Frederic A. Ogg as Managing Editor, the report proposed Professor Taylor Cole, of Duke University, as the new Managing Editor. This report was submitted to the officers of the Association and the members of the Executive Council, and Professor Cole's appointment has been unanimously approved. Professor Cole has accepted and will assume the editorship of the REVIEW on January 1, 1950. The recommendations in the report that the REVIEW thereafter appear quarterly instead of bimonthly and proposals concerning editorial assistance and financial arrangements were approved by a large majority. The report also made recommendations concerning editorial organization, editorial tenure, and editorial policy. These matters will be considered at the annual meeting. In announcing this transition in the editorship of the REVIEW, the officers of the Association and the Executive Council wish to express the appreciation of the Association for Professor Ogg's long and devoted service and to congratulate the Association on obtaining Professor Cole, whose distinguished work as editor of the *Journal of Politics* is well known, to carry on his work. In addition to Professor Key, members of the Committee are Professors Robert E. Cushman (Cornell University), Robert J. Harris (Louisiana State University), Peter H. Odegard (University of California), Benjamin F. Wright (Harvard University), and Dean Paul H. Appleby (Syracuse University).—QUINCY WRIGHT, *President, American Political Science Association.*

During the spring quarter, Professor Edward S. Corwin delivered a series of three lectures at the University of Minnesota.

On July 1, Dr. V. O. Key, Jr., of Johns Hopkins University, became Alfred Cowles professor of government and chairman of the department of political science at Yale University.

During the past summer, Professors Carl J. Friedrich, of Harvard University, and Maure Goldschmidt, of Reed College, were visiting members of the political science staff at the University of Washington.

Dr. Joseph E. McLean, formerly associated with the Princeton Surveys, has been appointed assistant professor in the department of politics at Princeton for the purpose of developing a program in local government.

Professor Lane W. Lancaster, of the University of Nebraska, taught at Yale

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University during the past year and in 1949–50 will teach at the University of California.

During May, Mr. Wilson W. Wyatt delivered six Walgreen Foundation lectures at the University of Chicago on the subject, "By the People: Six Challenges for the Fifties."

Dr. Robert H. Connery, of the University of Illinois, has accepted a professorship in the field of public administration at Duke University and will enter upon his new duties in the fall.

Professor Klaus Knorr will be on leave from Yale University during 1949–50 to teach at the University of Geneva, where he will be visiting professor of international economics.

Professor Edgar S. Furniss, Jr., of Yale University, taught in the recent summer session at Johns Hopkins University.

At Cornell University, Dr. Clinton L. Rossiter, III, has been advanced to the rank of associate professor.

Professor Luther J. Lee will be on leave from Pomona College during the coming academic year, serving as assistant field director of the Committee for Economic Development.

During the past summer, Dr. Kenneth C. Snyder, of Alfred University, gave courses in American government at Colgate University.

At the University of Virginia, Dr. Edward S. Overman has been appointed associate professor of political science, and will continue to serve as research associate in the bureau of public administration.

During the recent summer session at the University of Cincinnati, courses in American government were given by Professor John J. George, of Rutgers University.

At Columbia University, Messrs. Lawrence H. Chamberlain and Franz Neumann have been advanced to full professorships.

Mr. Arthur C. Banks, Jr., formerly of Moorehouse College, and recent holder of a Julius Rosenwald Fellowship at Johns Hopkins University, has been appointed assistant professor at Fisk University.

Mr. Ralph A. Straetz, graduate student at the University of Illinois during the past two years, has been appointed to an instructorship at Miami University where he will take the place of Mr. Louis H. Douglas, recently made head of the government section of the history and government department at Kansas State College.

Mr. David W. Smith, graduate student at the University of Utah, has ac-

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cepted an instructorship in history and political science at Montana State University.

At the University of Texas, Messrs. William S. Livingston and James R. Roach, who are completing their graduate work at Yale and Harvard, respectively, have been appointed assistant professors. Dr. Felix A. Nigro has resigned to accept a position in the School of Public Administration at the University of Puerto Rico.

At George Washington University, Dr. Arthur E. Burns has been appointed dean of the School of Government. He has acted as dean since July, 1946, when Dean William C. Johnstone took a position with the Department of State in India. Dr. Johnstone, who now holds the position of director of the Office of Education Exchange, Department of State, will remain on the University's staff as professional lecturer.

At the University of Missouri, Dr. Robert F. Karsch has been promoted to an associate professorship. Visiting staff members during the summer session were Dr. Robert Dishman of Dartmouth College, Dr. Jack Peltason of Smith College, and Mrs. Hazel Tutt Long of William Woods College.

Mr. Harold L. Enarson, of Whittier College (California), has been appointed acting assistant professor at Stanford University and will give courses in public administration.

Professors C. Herman Pritchett and Charles M. Hardin, of the University of Chicago, gave addresses at the National Emergency Conference on Resources held in Washington, D. C., May 12–14.

At the University of Pennsylvania, Professor Charles C. Rohlfing has requested that he be relieved of the departmental chairmanship in order to devote more time to writing and research. He will be succeeded by Associate Professor Norman D. Palmer.

Dr. Andrew Gyorgy, of Yale University, has accepted an associate professorship at Louisiana State University, where he will teach courses in international relations and comparative government. During the summer, he conducted a group of Yale students on a Mediterranean Study Tour, visiting Italy, Greece, and Turkey for a study of their political development.

At Ohio State University, a "Henry Russell Spencer Fund in Political Science" has been announced, to be employed in establishing a series of lectures in political science, to finance one or more fellowships for outstanding students in the field, or for other purposes formulated by an administrative board to be appointed by Ohio State's president. Professor Spencer retired during the past summer.

Professor Walter R. Sharp, of the College of the City of New York, will be on leave during the academic year 1949–50 to serve as chief of the International

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Collaboration Division of the Secretariat of UNESCO in Paris. Professor Sharp's primary responsibility will be to plan studies of current problems of international organization by social scientists in various countries under the sponsorship of UNESCO and coöperating research groups.

Professor Percy E. Corbett returned to Yale University in July after serving as visiting professor at the London School of Economics and Political Science during the spring term.

Dr. Emmette S. Redford was on leave from the University of Texas during the second semester for purposes of research.

At the University of Delaware, Dr. Felix Oppenheim, chairman of the department of political science, has been promoted to an associate professorship and Dr. Paul Dolan to an assistant professorship.

During the spring quarter, Professor Harold S. Quigley, of the University of Minnesota, participated in a seminar of the Center for Japanese Studies at the University of Michigan.

In June, Professor Asher N. Christensen, of the University of Minnesota, lectured and conducted a round table at the twelfth Latin-American Institute at the University of Oklahoma.

The Laboratory for the Social Sciences at the University of Minnesota has received a grant of $90,300 for a three-year period from the Carnegie Corporation.

Dr. Russell R. Elliott, of the Southern Oregon College of Education, has been appointed assistant professor of history and political science at the University of Nevada to take the place of the late Philip G. Auchampaugh.

Professor Eric Bellquist, of the University of California, has accepted an appointment as Public Affairs Officer for the State Department at the American Embassy in Stockholm.

At the University of New Mexico, Dr. Paul Kelso has been promoted to the rank of associate professor.

During the coming year, Professor Thomas P. Jenkin, of the University of California (Los Angeles), will be abroad on sabbatical leave.

Professor J. Roland Pennock, of Swarthmore College, taught during the summer in the Claremont Summer Session, sponsored by the Associated Colleges.

Professor Roger H. Soltau, of the American University at Beirut, is serving as visiting professor at Stanford University during the summer quarter. An authority on the history and politics of the Middle East and on the politics of contemporary France, he is giving courses on international relations and contemporary European governments.

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At the University of Chicago, Dr. Hans J. Morgenthau has been promoted to the rank of full professor, effective in the fall. He also has been elected a member of the executive council of the American Society of International Law and has been appointed consultant to the State Department to advise with the Policy Planning Staff on long-range problems of American foreign policy.

Dr. Karl C. Leebrick, vice-president and professor of government at the University of Hawaii, assisted the Inspector-General of the Navy, Rear Admiral Harry R. Thurber, in January in an inspection of the Trust Territories of the United States in the Pacific area. Dr. Leebrick is alternate member for the United States on the South Pacific Commission and a member of the Educational Advisory Commission under the Department of the Navy for Guam and the Trust Territories.

On May 27, the graduate alumni of the department of history and international relations at Clark University presented a book of essays to Professor George Hubbard Blakeslee at a dinner in his honor. Professor Blakeslee, who retired from his position as head of the department in 1943, is now with the Far Eastern Commission in Washington. The book, written by Clark graduate alumni, is entitled *Essays in History and International Relations in Honor of George Hubbard Blakeslee*, and was edited by Dr. Dwight E. Lee, of Clark University, and Professor George E. McReynolds, of the University of Connecticut.

Dr. Adolf Sturmthal, of Bard College, has been awarded a Social Science Research Council grant to assist in completing a study of current developments in the European labor movement, and also has been appointed special consultant on labor problems to the Rand Corporation.

After completing their residence work for the doctorate at Johns Hopkins University, Mr. Merrill R. Goodall has been appointed assistant professor at the University of Colorado, Mr. Arthur C. Banks, Jr., assistant professor at Fisk University, and Mr. Lloyd D. Musolf, instructor at Vassar College.

Dr. Roger S. Abbott, instructor at the University of Michigan, has been granted a leave of absence for the year 1949–50 to accept a traveling fellowship from the Doherty Foundation at Princeton University and will study the contemporary structure and functioning of the national government of Chile.

Under a grant from the University Research Fund at Princeton University, Professor Marver H. Bernstein is engaged in research during the summer at Washington, D. C., and other American cities in the field of public administration.

Mr. Kenneth Vines, part-time instructor at the University of Minnesota, has been appointed to an instructorship at Tulane University, and Mr. Robert Morlan, to an assistant professorship at the University of Redlands. Mr. Donald Shea, assistant, has received an appointment as instructor at the University of Wisconsin, Milwaukee branch.

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Dr. Ralph J. D. Braibanti, who received his doctorate in June from Syracuse University, has been appointed assistant professor at Kenyon College. He will offer courses in governments of Asia, Far Eastern politics, public administration, and intergovernmental relations. During the summer he taught at Utica College of Syracuse University.

Dr. Earl O. Kline, of Princeton University, has been appointed assistant professor at The Citadel, Charleston, S. C., and Dr. Richard H. Leach at Georgia Institute of Technology, Atlanta.

Professor Albert L. Sturm, of West Virginia University, taught at Pennsylvania State College during the main summer session and offered courses in American government and public administration.

Dr. Channing Liem, formerly of Princeton University, and more recently with the American Occupation Forces in Korea, has been appointed assistant professor at Pennsylvania State College.

Dr. William W. Marvel, of Princeton University, has been appointed to an instructorship in international relations at Yale University.

At Yale University, Mr. Ivo Duchacek will serve as visiting lecturer in political science during 1949–50, and Mr. William W. Kaufmann will teach and also hold a research assistantship in the field of international relations.

I r. Charles F. Spencer, during the past year acting president of East Central State College, Ada, Oklahoma, was in June elected to the presidency of the institution. His training in political science was received at the University of Wisconsin.

Professor Rollin B. Posey, of Northwestern University, has been named head of the Chicago Crime Commission's committee on prisons and parole.

In September, Dr. Roy C. Macridis, formerly of Harvard University, will join the political science staff at Northwestern University with the rank of assistant professor.

Professor William H. Simpson, of Duke University, spent seven weeks during June and July studying conditions in the textile industry in England.

In accordance with the principle of rotation, Professor Harold Sprout has succeeded Professor George A. Graham as chairman of the department of politics at Princeton University.

At Princeton University, Dr. William Ebenstein has been promoted to a full professorshlp.

Professor M. Henry Wells, of Yale University, spent the summer teaching at the University of Puerto Rico.

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Dr. Robert Strausz-Hupé, of the University of Pennsylvania, spent the summer in research work in Europe.

Dr. Eduard A. Táborský, visiting lecturer at the University of Texas during the second semester, will serve in that capacity also during 1949–50.

Newly appointed instructors at Princeton University include Messrs. Edgar Lane and William M. Beaney from the University of Michigan, Ned Joy from the University of California (Berkeley), and John L. Chase (for the second term of 1949–50).

With both Professors Walter R. Sharp and John D. Millett out of the country, President Quincy Wright has appointed Professor Charles S. Ascher, of Brooklyn College, chairman of the local arrangements committee of the American Political Science Association for the next annual meeting.

Professor Leslie Lipson has been granted a year's leave of absence from Swarthmore College to serve as visiting lecturer in comparative government during 1949–50 at the University of California (Berkeley).

On July 14, a dinner meeting of Occidental College's Third Annual Conference on "Our World in Crisis" was addressed by Professor James K. Pollock, of the University of Michigan, on the topic, "Are We Winning the Battle of Germany?". The Conference director was Professor Richard F. Reath, of Occidental.

During July, the University of Tulsa announced the establishment of H. O. McClure chairs of American history and American government, endowed for seventy-four years by Mr. and Mrs. H. O. McClure, pioneer Tulsa residents. The McClures have also endowed twenty scholarships of $500 a year, the recipients of which must take a course in American history or American government every semester.

Dr. William F. Barber, recently chief of the Division of Central American Affairs in the Department of State, has become deputy assistant secretary in the Department's Office of American Republic Affairs.

Mr. Sherman S. Hayden has been promoted to an associate professorship of international relations at Clark University, where he will be in charge of a new interdepartmental major in international relations shared in by the departments of economics, geography, and history.

In the recently published list of political scientists associated in some capacity with the work of the Hoover Commission, the name of Professor Louis W. Koenig, of Bard College, was inadvertently omitted. Professor Koenig was a member of the Commission's task force on foreign affairs.

During the summer, Dr. Paul S. Jacobsen, of Colgate University, taught at Johns Hopkins University, Dr. Ronald M. Stout, at the University of Oregon, and Mr. Harry C. Behler, at the Hudson Shore Labor School of the U.A.W.

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A leaflet entitled *Census Bureau Publications on Governments* has been issued by the Bureau of the Census and is available from that agency upon request. The bulletin describes briefly each of the 17 reports on governmental finances and employment which the Bureau expects to issue during the fiscal year starting July 1, 1949, and lists other recent Bureau publications relating to state and local government.

The South Central Region of Soroptimist International Association, meeting in Oklahoma City in May, voted to make available a $1,500 graduate fellowship to be awarded to a woman in a field "rare and difficult for women to enter, such as international law and organization, diplomacy and international politics, and international economic relations." Applicants should address Mrs. Grace B. Shurley, 1112 Barclay Street, Forth Worth, Texas, chairman of the fellowship committee.

During June, the Marshall College department of political science offered a workshop on American-Chinese-Soviet Relations in the Far East under the directorship of Dr. Conley H. Dillon. The special lecturer was Dr. Chu Djang, visiting professor of Far Eastern Relations at the Institute of Advanced International Studies, Washington, D. C. Dr. Djang gave the background lectures for the workshop, Dr. Carl Leiden gave lectures on Russian aspects, and lectures on American policy were given by Dr. Dillon.

The Bureau of Public Administration at the University of Tennessee added two new members to its staff in July: Mr. Luther Johnson, one of last year's fellows in the Southern Regional Training Program in Public Administration, and Mr. Hoyt Crider, who has been completing work for a master's degree at the University of Alabama. Mrs. Virginia Holmes Brown has resigned as editor and executive secretary of local organizations.

Mr. Eugene C. Brownson has transferred to the Bureau of Naval Personnel, Navy Department, as organization and methods examiner in the Administrative and Management Division, from the Veterans Administration, where he was a personnel technician in the Recruitment and Placement Service, Office of the Assistant Administrator for Personnel. Prior to that, and after being released to inactive status in the Navy, he served as an instructor in political science at the University of Alabama.

As visiting professor at Johns Hopkins University during the year 1949–50, Professor Thomas I. Cook will give work in political theory and comparative government in place of Professor Johannes Mattern, who has retired from full-time teaching. Dr. George S. Pettee, formerly of the staff of the Committee on Foreign Affairs of the House of Representatives and now with the Johns Hopkins Operations Research Office in Washington, will do part-time graduate teaching in politics and theory. Dr. James E. Russell, of Columbia University, has been appointed assistant professor for undergraduate teaching in politics.

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Professor Carl B. Swisher has resumed the chairmanship of the department after a two-year period of relief from its duties.

The fourth annual Workshop in State and Local Government in Michigan was held at Michigan State College July 5–22. The fields of study were: the rôle of the governor; legislature and courts; procedures of county, township, and city governments; administration of agencies charged with health, child and adult welfare; education; roads; state and local finances; responsive and responsible government; and the rôle of schools in promoting more intelligent and active participation in public affairs. Various state and local officials, as well as educators and non-governmental leaders, participated.

The William Edgar Borah Foundation for the Outlawry of War sponsored its second annual conference at the University of Idaho, April 12–14, on "The Causes of War and Conditions of Peace." Sixty-seven college and university professors from Montana, Idaho, Washington, and Oregon participated in fifteen forums dealing with problems of war and peace. Principal speakers were Professors Clyde Eagleton of New York University, Graham H. Stuart of Stanford University, Robert E. Hosack of the University of Idaho, E. C. Stakman of the University of Minnesota, and President Lynn T. White of Mills College.

The twenty-fifth annual Norman Wait Harris Foundation institute on international relations was held at the University of Chicago from May 25 to 28. The general topic was "Nationalism and Regionalism in South Asia," and speakers included Mr. J. S. Furnivall, adviser to the government of Burma, Miss Cora Dubois, of the State Department, and Brigadier-General Carlos P. Romulo, Philippines representative at the United Nations. Arrangements for the Institute were in the charge of Mr. Phillips Talbot.

The University of Washington Institute of International Affairs presented a three-day program on the subject "Problems of the United Nations, the North Atlantic Pact, and the Treaties of Peace," July 6–8. Those appearing on the program included Dr. Ralph J. Bunche, recently acting mediator in Palestine for the United Nations; Professor Carl J. Friedrich, of Harvard University; Professor Henry B. Parkes, of New York University; Professor Maure Goldschmidt, of Reed College; and Mr. Jiuje G. Kasai, former member of the Japanese Diet. Professor Dell G. Hitchner served as director.

Sponsored by the Bureau of Governmental Research and Services, and directed by Professor Donald H. Webster, the Fourteenth Annual Institute of Government was held on the campus of the University of Washington, July 11–15. Current problems of government and public affairs were discussed in section meetings devoted to local action in democracy, law enforcement, planning, public welfare, traffic engineering, civil rights, taxation, public library administration, public relations, and development of the Columbia Valley Basin.

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Political scientists taking part either as speakers or as discussion leaders included Professors Carl J. Friedrich, of Harvard University, and Kenneth C. Cole, Charles E. Martin, George A. Shipman, Hugh A. Bone, and Mr. Ernest H. Campbell, assistant director of the Bureau of Governmental Research and Services, all of the University of Washington.

Published by the Joint Committee on Slavic Studies, a group of American scholars appointed by the American Council of Learned Societies and the Social Science Research Council, the weekly *Current Digest of the Soviet Press* is intended as a service to scholars and research specialists interested in following Soviet developments. The *Digest* contains summaries, condensations, or full translations of all items appearing in *Pravda* and *Izvestia*, and includes significant material from some forty other Russian publications; and the materials are brought to American readers within three weeks after they appear in Russia. The cost of an institutional subscription is $150.00 a year, after which supplementary subscriptions may be entered at $25.00 a year.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY DAVID FELLMAN

University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

John T. Amendt; B.S., Loyola University of Los Angeles, 1946. The Effect of Humanism on Political Thinking in America after the Civil War. *Georgetown.*

Theodore Stevenson Baer; A.B., Harvard, 1947; A.M., *ibid.*, 1948. The Applicability of an Ideal-Type Methodology in Comparative Political Analysis. *Harvard.*

William M. Barr; Litt. B. Rutgers, 1928; A.M., Columbia, 1936. The Philosophy of Woodrow Wilson. *Columbia.*

Loren Peter Beth; A.B., Monmouth, 1946; A.M., Chicago, 1948. Separation of Church and State. *Chicago.*

Bernard Borning; A.B., Minnesota, 1936. The Political Ideas of Charles A. Beard. *Minnesota.*

Bernard E. Brown; B.S.S., C.C.N.Y., 1945; A.M., Columbia, 1946. Lieber and Burgess; A Critical Study in American Political Philosophy. *Columbia.*

George Cochrane Bryan; A.B., Williams, 1942. Ideas of Leadership in American Political Thought. *Harvard.*

[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 772 (1937); XXXII, 796 (1938); XXXIII, 732 (1939); XXXIV, 767 (1940); XXXV, 752 (1941); XXXVI, 734 (1942); XXXVII, 706 (1943); XXXVIII, 766 (1944); XXXIX, 779 (1945); XL, 775 (1946); XLI, 754 (1947); XLII, 759 (1948).

Items which appeared in the August, 1948, list are in general classified under the same headings in the present list, and new items have been assimilated to the 1948 classification as far as possible. In cases where classification of an item has been suggested by the institution concerned, the suggestion has been followed. Each item is listed under one classification only. Names starred are merely carried over from the 1948 list, no more recent data having been received.

The lists printed in the REVIEW are based on information from departments giving graduate instruction in political science. Often dissertations are in progress in departments of economics, history, sociology, etc., which overlap or supplement dissertations in preparation in political science. Attention is called especially to the following lists: "Check List of Current Researches in Public Administration Reported to the Committee on Public Administration, Social Science Research Council" (mimeographed, most recent edition, January, 1943); "Doctoral Dissertations in Political Economy in Progress in American Colleges and Universities," in the *American Economic Review;* "List of Doctoral Dissertations in History Now in Progress," formerly published by the Division of Historical Research, Carnegie Institution of Washington, but since the 1938 issue as a supplement to the *American Historical Review;* and "Higher Degrees in Sociology," in the *American Journal of Sociology.* Usually one list is published each year. These are in addition to the "List of American Doctoral Dissertations Printed in 1938," the most recent of an annual series published by the Library of Congress; and Edward A. Henry's "Doctoral Dissertations Accepted by American Universities, 1947–1948," the fifteenth of a series beginning in 1933–34, compiled for the Association of Research Libraries. Consult, for other lists, T. R. Palfrey and H. E. Coleman, Jr. "Guide to Bibliographies of Theses, United States and Canada" (Chicago, American Library Association, 2nd ed., 1940).

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Frederic S. Burin, II; B.S.S., C.C.N.Y., 1942; A.M., Syracuse, 1946. Police Against State. *Columbia.*

Gordon Baylor Cleveland; A.B., Davidson, 1938; M.S., Alabama Polytechnic Institute, 1947. The Influence of Intellectuals, particularly Political Scientists and Historians, on the Progressive Movement up to 1912. *North Carolina.*

Thomas Albert Corbett; A.B., St. Mary's of the Springs College, 1935; A.M., Ohio State, 1936. The Masses and the International Community. *Catholic University.*

Raymond Francis Cour, C.S.C.; A.B., Notre Dame, 1937; A.M., *ibid.*, 1943. Catholic Action and Politics. *Notre Dame.*

Richard Eugene Curl; A.B., Ohio State, 1939; A.M., *ibid.*, 1940. Public Opinion and the Atomic Energy Act of 1946. *Princeton.*

John H. Davenport; B.S., Northwestern, 1944. Distinction of the Just and Unjust War from Grotius to the Present. *Northwestern.*

Harry Rex Davis; A.B., Texas Christian, 1942; A.M., Chicago, 1946. The Political Philosophy of Reinhold Niebuhr. *Chicago.*

Howard E. Dean; A.B., U.C.L.A., 1939. A Critique of the Political Philosophy of Walter Lippmann. *Columbia.*

Lawrence Edward Dennis; A.B., Iowa State Teachers College, 1940; A.M., Minnesota, 1942. A Handbook for the Study of Public Affairs. *Iowa.*

Karl Wolfgang Deutsch; Dr. of Law and Political Science, Prague, 1938; A.M. Harvard, 1941. The Economic Factor in Nationalism; A Technique of Enquiry Applied to Some Successors of Central Europe. *Harvard.*

Susan H. Devine; A.B., Kansas City, 1938; A.M., *ibid.*, 1940. The Political and Social Philosophy of Herbert Hoover. *Pennsylvania.*

Joseph C. Dougherty, Jr.; A.B., St. Charles Seminary, 1944; A.M., Georgetown, 1948. The Political Thought of George Bernard Shaw as Expressed in His Drama. *Georgetown.*

William Francis Dowling, Jr.; A.B., Harvard, 1945; A.M., *ibid.*, 1947. The Political Thought of a Generation of Adamses. *Harvard.*

Wilbert B. Dubin; B.S., Georgetown, 1947. Rôle of Private Philanthropy and Its Economic and Social Contributions to United States Development. *Georgetown.*

Emily L. Ehle; A.B., Smith, 1934; A.M., Pennsylvania, 1939. Leadership in America; A Study of Identification and Acceptance Among Specialized Groups. *Pennsylvania.*

Dominic Elder, C.S.C.; A.B., Notre Dame, 1936; A.M., *ibid.*, 1942. Thomas Paine and His Philosophy of the Common Man. *Notre Dame.*

Webb Sacket Fiser; A.B., Chicago, 1942; A.M., *ibid.*, 1947. The Political Philosophy of José Vasconcelos. *Chicago.*

Edward Fishman; A.B., Bates, 1938; A.M., Pennsylvania, 1948. The Political Theory of Owen J. Roberts. *Pennsylvania.*

Theodore B. Fleming, Jr.; A. B., Indiana, 1939; A.M., *ibid.*, 1940. John Stuart Mill's Essay *On Liberty* and Its Critics. *Yale.*

Samuel Fox; Ph.B., Chicago, 1924. Majority Rule and Minority Representation as Provided by the Electoral System of the Limited Vote. *Notre Dame.*

Sergio Funaro; A.M., Columbia, 1946. The Political Philosophy of Tommaso Campanella. *Columbia.*

Thomas M. Furst, Jr.; A.B., Santa Barbara, 1947; A.M., U.C.L.A., 1949. The Idea of the Liberal Polity. *U.C.L.A.*

Peter Gay; A.B., Denver, 1946; A.M., Columbia, 1947. Bernstein and Revisionism. *Columbia.*

Alexander Lawrence George; A.M., Chicago, 1941. The Intelligence Value of Constant Analysis. *Chicago.*

Robert O. Gibbon; A.B., Kansas, 1943; A.M., *ibid.*, 1945. The Relation of the State to the Economic Order in Greek and Roman Political Thought; A Study of Greek and Roman Political Thinkers. *Minnesota.*

Frank Grace; A.B., Vanderbilt, 1939; A.M., Louisiana, 1940. The Concept of Property in Modern Christian Thought. *Illinois.*

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Norman B. Hannah; A.B., Illinois, 1941; A.M., Louisiana State, 1943. The Purpose of the State in Greek Political Theory. *Minnesota.*

Virginia E. Hitchcock; A.B., New Mexico, 1944; A.M., *ibid.*, 1944. The Political Implications of the Works of American Anthropologists. *California.*

G. Edward Janosik; B.S. in Ed., Southeast Missouri State College, 1939; A.M., Pennsylvania, 1947. The Political Theory of the Mormon Church. *Pennsylvania.*

Ralph John; A.B., Berea, 1941; S.T.B., Boston University, 1944; S.T.M., *ibid.*, 1945. Apostolic Succession as a Principle of Organization in Church Administration. *American.*

Max M. Kampelman; A.B., N.Y.U., 1940; LL.B., *ibid.*, 1945; A.M., Minnesota, 1946. The Political Philosophy of the C.I.O. *Minnesota.*

John Hans Kautsky; A.B., Chicago, 1946; A.M., *ibid.*, 1947; A.M., Harvard, 1949. The Social and Political Thought of Karl Kautsky. *Harvard.*

Josephine Yager King; A.B., Pennsylvania, 1942; A.M., Bryn Mawr, 1943. The Concept of the Two-Party System in American Political Thought. *Bryn Mawr.*

Fred Krinsky; A.B., Brooklyn, 1944; A.M., Pennsylvania, 1946. Zionism and Palestine; A Study of the Renascent Jewish Nationalism. *Pennsylvania.*

Morton Kroll; A.B., U.C.L.A., 1946. Marxism in Spanish Political Thought. *U.C.L.A.*

Bernard Kronick; A.B., California, 1937. Political Ideas of Winston Churchill. *California.*

Charles Sebastian La Cugna; A.B., Manhattan, 1937; A.M., Fordham, 1944. The Political Thought of Don Luigi Sturzo. *Notre Dame.*

Charles Eugene Looper; A.B., Furman, 1941; A.M., Louisiana State, 1942. The Nature of the Union; An Exposition of the Theories of Jefferson Davis, Alexander H. Stephens, Joseph Story, and Daniel Webster. *Georgetown.*

H. Rowland Ludden; A.B., Colgate, 1943; A.M., Princeton, 1945. Informational Activities of the Department of State; Historical Development and Present Organization and Operations. *Princeton.*

Richard Dyer MacCann; A.B., Kansas, 1940; A.M., Stanford, 1942. Government Use of Documentary Films. *Harvard.*

Brian A. McGrath, S.J.; A.B., St. Louis, 1936; S.T.L., Woodstock, 1945; A.M., Georgetown, 1940; A.M., Harvard, 1948. The Basic Political Philosophy of Woodrow Wilson. *Harvard.*

Thomas Francis Maher; A.B., St. Joseph's Seminary, Yonkers, 1936; A.M., Notre Dame, 1942. Population and Politics; The Political Aspects of Birth Control. *Notre Dame.*

Milton R. Merrill; B.S., Utah State, 1925; A.M., Columbia, 1932. The Public Career of Reed Smoot. *Columbia.*

Alfred George Meyer; A.M., Harvard, 1946. Lenin's Theory of Revolution. *Harvard.*

John Carroll Murray; Ed.B., Rhode Island College of Education, 1941; A.M., Brown, 1946. The Philosophic Opposition to the French Revolution. *Brown.*

Ilse Eichelgrun Nelson; B.S., Anderson, 1942; A.M., Butler, 1943. The Practical Aspects of Max Weber's Political Philosophy: Max Weber's Attitude toward the Political Problems of Germany, 1885–1921. *Chicago.*

Dorothy L. Noble; A.B., Hood, 1930; A.M., Columbia, 1934. Francis Nicholson. *Columbia.*

Simon Noveck; A.B., Yeshiva College, 1936. History of the Democratic Idea in America, 1765–1801. *Columbia.*

M. Denis O'Grady, R.S.M.; A.B., St. Xavier, 1937; A.M., Loyola University, 1948. Senator Thomas J. Walsh of Montana; His Career and Political Philosophy. *Notre Dame.*

Joseph Cornwall Palamountain, Jr.; A.B., Dartmouth, 1942; A.M., Harvard, 1948. The Politics of Distribution. *Harvard.*

Daniel P. Parker; A.B., Emory, 1943; A.M., Pennsylvania, 1947. The Political and Social Philosophy of Harry S. Truman. *Pennsylvania.*

Frank A. Pinner; A.B., Paris, 1936. An Empirical Investigation of Political Value Systems. *California.*

Ithiel DeSola Pool; A.B., Chicago, 1938; A.M., *ibid.*, 1939. Economic Conditions of Political Freedom. *Chicago.*

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Leonard D. Quinlan; A.B., Toronto, 1940; A.M., *ibid.*, 1942. Political Philosophy of Suarez. *Chicago.*

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BOOK REVIEWS AND NOTICES

Reports and Supporting Documents. COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT. (Washington, D. C.: Government Printing Office. 1949. $10.00.)

This epoch-making Commission, created by act of Congress approved July 7, 1947 (Public Law 162, 80th Cong.) completed its work with the filing of a concluding report with the Congress on May 20, 1949. Its findings and recommendations are to be found in a series of twenty-four reports, printed in nineteen separate documents. In addition, eighteen reports of task forces appointed by the Commission to conduct surveys of particular parts or functions of the executive branch were published as Appendices A to R, and a considerable number of other documents and reports were filed with the Congress in typescript form. A few of these have been printed separately as House or Senate documents. (For a complete list of reports and supporting documents, see the concluding report, pp. 74–82.)

The Commission, popularly known as the Hoover Commission, was directed by Congress to study and investigate the organization and methods of operation of the executive agencies of the national government for the purpose of making recommendations which would promote economy, efficiency, and improved service in the transaction of the public business. The twelve members—a bipartisan group including members of Congress, administrative officials, and prominent citizens, under the chairmanship of former President Herbert Hoover—called to their aid some 300 persons qualified and experienced in a wide variety of fields. The political science profession was ably represented on the Commission proper by Professor James K. Pollock, of the University of Michigan, and by a goodly number of persons on the staffs of the Commission and the task forces.

Space permits only the barest sampling of the many findings and recommendations included in the Commission's several reports. In the field of general management, the Commission's analyses and proposals follow much the same pattern as the prewar report of the President's Committee on Administrative Management. To the Office of the Budget (now a Bureau), which would serve as the President's principal instrumentality for the improvement of management and the attainment of economy and efficiency throughout the executive branch, the Commission proposes to add an Office of Personnel under the direction of the chairman of the Civil Service Commission, an Office of the Economic Adviser (to replace the present Council of Economic Advisers), the National Security Council, the National Security Resources Board, and an additional secretary to clear information on problems dealt with by the President's staff and by cabinet or interdepartmental committees. Departmental management would be strengthened by giving secretaries more staff aid and greater authority over the internal organization of their departments. Field services would benefit by the creation of an officer in Washington responsible for the study, simplification, and coördination of departmental work in the field.

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With respect to central staff agencies, the Commission advocates (1) a reorganization of the Civil Service Commission by vesting sole responsibility for administrative work in the chairman and by decentralizing operating personnel functions to the departments and agencies subject to policies and standards fixed by the Commission; (2) a "performance budget" emphasizing functions, activities, and projects rather than organization units, and authority for the President to reduce expenditures within appropriation limits; (3) the establishment of an Accountant General in the Treasury Department with authority to prescribe general accounting methods and procedures, but subject to approval by the Comptroller General within the powers now conferred on the latter by act of Congress; and (4) the creation of an Office of General Services, under a director appointed by the President, to have responsibility for the functions of supply, records, and the operations and maintenance of public buildings.

Only a very few of the many recommendations relating to the line or functional departments and agencies can be mentioned. The whole top-level structure of the State Department should be reorganized, and the departmental and foreign services more closely coördinated. Various changes are suggested to approach more nearly a unified National Military Establishment under the Secretary of National Defense. The Treasury Department would become more nearly unifunctional by the transfer of several bureaus to other agencies, the creation of the Office of Accountant General, and giving the Secretary of the Treasury supervision over major lending agencies. The Post Office would be reorganized along the lines of a government business enterprise, with a new Director of Posts as the operating head under the Postmaster General, and fifteen regional directors. Transfers of various agencies would give the Department of Agriculture full responsibility for land management and the Department of the Interior for water resources and construction.

All non-regulatory transportation activities would be transferred to the Department of Commerce, and the Department of Labor would get the Bureaus of Employment Security and Employees' Compensation from the Federal Security Agency and the now independent Selective Service System. A new Department of Social Security, Education, and Indian Affairs and a new independent United Medical Administration are proposed. The insurance operations of the Veterans Administration would be organized as a government corporation with the Administrator of VA as president, but with actual operations vested in an executive vice-president and general manager. The regulatory commissions would be retained, but divested of all operating functions. Federal business enterprises would be subjected to closer Congressional scrutiny, certain agricultural credit agencies consolidated, and all housing activities placed under a single administrator. The Commission offered two alternatives for the organization of Overseas Administration without recommendation, and suggested that a continuing agency for the study of federal-state relations be created.

The full impact of, and the factual data and informed judgments lying behind, the many Commission proposals cannot be fully understood without a careful reading of the task force reports. Utilization of the printed documents by

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all concerned has been aided greatly by the preparation of an index by the Legislative Reference Service of the Library of Congress and published at the end of the concluding report.

It is not surprising that, given the wide range of problems dealt with in its reports, the Commission was not able to achieve complete unanimity in its findings and recommendations. Similarly, students and practitioners of government and administration will not concur in all of the proposals. But few will dissent from the general conclusion that an excellent and thorough job has been done, and that as a result an opportunity of unparalleled significance is offered to achieve noteworthy changes and improvements in our national administrative structure. Action already has been taken by both Congress and the President in line with some of the proposals made; Mr. Hoover is devoting much time to meetings with Congressional committees at which various aspects of the Commission's work are under consideration; and a national citizens' committee under the chairmanship of President Robert L. Johnson, of Temple University, is endeavoring to stimulate Congressional and public interest in and support for the total program.[1]

LLOYD M. SHORT.

University of Minnesota.

The American Presidency in Action, 1789; A Study in Constitutional History. BY JAMES HART. (New York: The Macmillan Company. 1948. Pp. xv, 256. $4.00.)

This is an unusual book which will stimulate quite different reactions from readers, depending upon their points of view and upon their purposes in consulting the volume. It is an analytical study of the first year of the Presidency, based largely upon legislative decisions, the debates in Congress, and the personal papers of participants. The works of other scholars, notably Thach and Corwin, are also carefully considered. Although the author has made an heroic and on the whole successful effort to be objective, the volume will be the subject of controversy.

The facts are reviewed and the findings presented in such a way, topic by topic, that the reader is encouraged and almost forced to draw his own conclusions. The book must be read carefully; it cannot be grasped by scanning topical sentences and noting occasional summaries. This feature must distress those who reach quickly for some one else's conclusions; but it is extremely useful to political scientists who seek an intimate contact with the materials and are willing to ponder them. Professor Hart has almost edited his working papers for the scholar's benefit.

Although the material is not organized about the author's principal ideas, conclusions are interlarded with findings, and occasionally the author sets forth

[1] The Commission's studies and reports will be the subject of a six-part symposium in the October issue of the REVIEW. MAN. ED.

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his own interpretation at some length. These forthright views will doubtless strike fire from those who fear a strong Presidency or who hold to the see-saw theory that it can be achieved only at the expense of a weak Congress.

The year 1789 made it clear that the Constitution had left much to be settled in determining the nature of the Presidency. The steps of the first year went in the direction of a strong, integrated executive, and this was, in Hart's view, the right direction. In his concluding comment on "The Establishment of the Great Departments" (the last chapter) and the pivotal question of removal power, the author says: "The legislative decision of 1789, in its bearing upon the *crucial* relation of the President to *department heads*, has thus, in any view, had profound effects upon the constitutional development of the Presidency. It is the considered opinion of the present writer that the net result has been to help save that great office from the dangerous disintegration which every *administrative* position taken in 1789 other than that of the House majority would have invited." This is heartening frankness, and political scientists cannot help but benefit from having so scholarly a study of the Presidency from a mid-century perspective by one who is not afraid of executive institutions.

The early chapters bring out the self-consciousness of the statesmen of 1789 in their rôle of precedent-makers. Nothing was done casually. The first President gave serious thought to his "style of living" and sought advice on the subject. He had his own well-considered ideas, but was anxious "to conform to the public desire and expectation"—no easy task, then or today. Washington's famous battle of protocol with Governor Hancock—no chance engagement—found the General as sound a tactician in a contest of etiquette as in a passage at arms. There is no doubt that the first President understood his position as a public figure and as chief of state, and he seems to have moved with a sure step.

Setting the pattern for relations with Congress and the Senate was more perplexing. If false steps were made, Washington was at least not a man to be caught off balance twice. The speed with which forms and procedures were stabilized was perhaps surprising. After 160 years, students of legislative-executive relations are beginning to suspect that substantial stability must await maturing experience and considerable progress toward representative and responsible leadership within the Congress itself.

Hart's study of "The President as Administrative Chief" reveals Washington again on sure ground—methodical, vigorous, decisive, and skilled in the art of consultation. A significant point to emerge from analysis of the legislative debates and decisions in setting up the "great departments" is the substantial agreement on administrative theory despite the disagreement on constitutional theory.

This initial volume is most useful, and it is greatly to be hoped that the author is well along with his work on the projected succeeding volumes.

GEORGE A. GRAHAM.

Princeton University.

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Toward Efficient Democracy; The Question of Governmental Organization. By Arthur C. Millspaugh. (Washington: The Brookings Institution. 1949. Pp. viii, 307. $3.50.)

A natural function of the political scientist is the academic proposal of constitutional reform. From Plato to the present, the line of descent comes down unbroken. No man is counted a profound student of government until he has censured the political system under which he lives and has amused (or shocked) his colleagues with sensational suggestions for its now-or-never improvement. Though none of us can hope to be the "one Reformer" for whom Emerson called in *The Conservative,* all of us are eternal dwellers in his "spring and summer" of optimistic social criticism. "The project of innovation is the best possible state of things," especially for the professor of political science. Our current censors form a goodly company—Hazlitt, Elliott, Finletter, Hehmeyer, MacDonald, McKee, and to some extent all of us engaged in teaching and writing about American government.

Now to the head of this sanguine parade moves Dr. Arthur C. Millspaugh, a political scientist whose solid reputation demands scrupulous attention to his proposals of reform. We have for some time been aware of his severe displeasure with many of the arrangements and procedures of our national polity. His *Democracy, Efficiency, Stability* (1942) was a profound and stimulating, though shapeless and somewhat cantankerous, inquest of the inadequacies of the national government. This new book takes up where the old one left off. Although much of it is devoted to a reworking of his earlier criticisms of the machinery of American national government, in the middle of his diagnosis Dr. Millspaugh turns suddenly positive and outlines a novel pattern of constitutional organization designed to cure most if not all of our present discontents.

Briefly, his plan is this: to scrap the Presidency and House of Representatives, and institute a brand-new constitutional system having three main political instruments—(1) a National Council of twenty-one members "to possess supreme legislative and executive powers;" (2) a Senate (which could be *the* Senate) "with reviewing and delaying functions, but no veto;" and (3) "a chief executive charged with the conduct of administration, appointed by and responsible to the National Council." This supreme conciliar organ, which would do its work through a series of committees, would be elected by the people in a nation-wide suffrage that would be frankly rigged in behalf of the two-party system. I cannot do Dr. Millspaugh's suggestions adequate justice in this short review, but I can advise prospective readers of this book (I hope there will be many) to concentrate closely upon Chapter VI. These proposals are by no means the sum total of the worth-while portions of *Toward Efficient Democracy,* yet it is for them that it will be remembered and quoted.

Each reader must decide for himself just how seriously this plan is to be taken. It is only fair to point out that Dr. Millspaugh shrewdly anticipates all the "criticisms and objections" that are likely to be levelled against an essentially utopian work of this nature. Although this advance apology will hardly render his National Council any less fantastic to the cynical or realistic or "prac-

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tical" or just plain earthbound student of American government, it is useful to remember that for some centuries now certain thinkers have done great service to their fellow-men with books that counseled unexecuted schemes of constitutional reform. As Dr. Harold G. Moulton writes in his preface to this work: "The somewhat novel type of governmental reorganization suggested is not proposed for immediate adoption but as a focus for discussion in order to reach beyond minor questions and consider basic problems of governmental structure and organization." Moreover, there is an air of reality to these particular proposals; Dr. Millspaugh's analysis of our current ills is telling and his outline of the proper objectives of popular government unassailable. Set in such a context, the proposals of Chapter VI remain safely this side of meandering fancy.

The fact that *Millspaugh's Republic* will not come to pass in our life-time by no means signifies that it will fail to answer its author's admirable purpose. And who are we to say that his plan wouldn't work?

CLINTON L. ROSSITER.

Cornell University.

The Constitution and Socio-Economic Change. BY HENRY ROTTSCHAEFER. (Ann Arbor: University of Michigan Law School. 1948. Pp. xvi, 253. $3.50.)

This volume consists of five lectures delivered at the University of Michigan Law School as the first of a series to be known as the Thomas M. Cooley Lectureship. The author is a professor at the University of Minnesota Law School. The first lecture is a tightly-knit summary of the development of federal constitutional powers prior to 1933. The second deals with the expansion of those powers since 1933. The third deals with the expansion of state powers during the latter period. The fourth deals with the protection of personal and property rights in recent years; and the fifth and last discusses implications of recent trends.

The author finds that "since 1933 the Supreme Court has so construed the Constitution as to sustain a great expansion of federal powers, a relaxation of important limitations on state powers, an acceptance of a more extensive and intensive regulation of business, and an increase in the protection of personal liberty in areas other than business" (p. 202). He finds these changes the product of the dogma that government should assume an important and permanent rôle in achieving economic stability and a more just social order, and he doubts whether this dogma is likely to be discarded. He finds that the dominant idea in current political and economic thought is the need for governmental economic planning to bring from our resources the maximum yield in social welfare and economic stability.

This dominant philosophy has not led merely to aggrandizement of power in the hands of the federal government at the expense of the states. The exercise of state power too has vastly increased, and the Supreme Court has modified the trends of past decisions to pave the way "for a more extensive and intensive assertion of state power" (p. 144). How far this trend will go and what the effect will be on federal-state relations, the author does not attempt to predict. "The

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data are insufficient to warrant a conclusion that the Court is tending more and more to use its discretion in favor of restricting state powers whenever possible. But certainly the decisions do not reveal any trend in the opposite direction" (p. 100). While property rights are yielding to more and more extensive control from both federal and state governments, he finds by contrast that "never have freedom of speech and press and of religion been more adequately protected. . . . " (p. 236).

The book is compactly written and involves the disciplined presentation of the implications of large numbers of Supreme Court decisions. Although the language used, apart from the names of cases, is language customarily employed by laymen, the generalizations seldom rise above the level of matters which are primarily of legalistic and scholarly concern. While the author does well his appointed task, he does little in the way of going beyond it to provoke thought about the significance of the position of a constitution within a social system, or even about the place of a judiciary such as ours within such a system. He aids but little, therefore, in the reappraisal of the position of the most powerful court in the world as it performs its functions in a post-New Deal and postwar setting.

CARL BRENT SWISHER.

Johns Hopkins University.

The Roosevelt Court; A Study in Judicial Politics and Values, 1937–1947. By C. HERMAN PRITCHETT. (New York: The Macmillan Company. 1948. Pp. xvi, 314. $5.00.)

Although this book treats numerous phases of constitutional law, it is not a history of constitutional development from 1937 to 1947. Mr. Pritchett has confined his study to the non-unanimous opinions of the Supreme Court during this period on the assumption that a unanimous decision reveals little of deliberation in the judicial process and "nothing of the conflicts around the judicial conference table, the alternative lines of argument developed, and the compromises which went into the final result." He also assumes that a divided opinion permits the judges to "supply information about their attitudes and their values which is available in no other way" and that a divided opinion in effect "admits the public to the Supreme Court's inner sanctum" (p. xii).

Following up these assumptions, Mr. Pritchett proceeds to apply his method of tabulating the alignments of the individual judges and to analyze their doctrinal leanings in majority, concurring, and dissenting opinions on such matters as economic regulation and legislative supremacy (Chap. IV), civil liberties and judicial supremacy (Chap. V), the rights of persons accused of crime (Chap. VI), judicial control over administration (Chap. VII), and judicial decisions affecting labor (Chap. VIII). He devotes two chapters to Court divisions and alignments (Chaps. II and IX), one to an introduction (Chap. I), one to uncertainty in constitutional law (Chap. III), and the final chapter to a description of the plight of a liberal Court (Chap. X). The book contains a useful list of cases overruled by the Supreme Court from 1937 to 1947 and a table of the cases cited in the text.

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In my opinion, the most useful portions of Mr. Pritchett's book are those in which he presents the doctrinal differences of the judges rather than those containing statistics on judicial alignments. Even here, however, Mr. Pritchett, contrary to his own views and intentions, by emphasizing disagreement and differences with disregard for agreement gives greater currency to the idea prevalent in certain legal circles that the Supreme Court as a result of appointments made between 1937 and 1945 is a group of wrangling theorists bent on propagating constitutional uncertainty. It is true, of course, as Mr. Pritchett adequately demonstrates, that the Court from 1937 to 1947 was divided on such fundamental issues as the negative effect of the commerce clause upon state legislation, the presumption of invalidity against state legislation affecting the basic freedoms of the First Amendment as included in the Fourteenth, the incorporation of the safeguards protecting persons accused of crime into the due process clause of the Fourteenth Amendment, judicial review of administrative action, and the law pertaining to labor. But it is also true that there were wide areas of agreement and, as Mr. Pritchett points out, that the individual judges have not been consistent in their individualistic opinions. More important than these considerations is that the judges have frequently been divided over means rather than ends, and frequently over questions of degree. Occasionally, too, the judges have agreed upon some ultimate objective, but divided on other issues. Thus in the Hope Natural Gas case, all were agreed on rejecting the esoteric and unrealistic criteria of Smyth v. Ames as applied to valuation of public utilities for rate-making purposes. The difference between Justices Black and Frankfurter arose over whether rate-making is ultimately a judicial or an administrative function. None of the justices approved of the rule in the Schwimmer and MacIntosh cases, but some thought Congress and not the courts should rescind the rule after long legislative acquiescence.

The emphasis on differences also tends to obscure the fact that all of the Roosevelt appointees in their own way, some in greater degree than others, have contributed to a revision of constitutional law which shifts protection of constitutional guarantees from propertied interests to labor and submerged groups, which increases the scope of the civil liberties, and which enlarges the discretion of legislative assemblies and administrative agencies, the net effect of which has been the eclipse of due process of law in the economic sphere, the transformation in many ways of the federal system through the commerce and taxing powers, the decline generally of judicial review, and the trend, sometimes with interruptions, toward absolutism in matters affecting freedom of expression and religion.

Mr. Pritchett's best analysis of the Roosevelt Court is the concluding chapter, entitled "The Plight of a Liberal Court," which must veer between the intellectual heritages of Holmes' skeptical conservatism and Brandeis' active liberalism, between legislative supremacy and liberalist activism, and between judicial abdication and judicial preservation of civil rights, not to mention the ambivalence and contradictions inherent in twentieth-century liberalism. It goes without saying that anyone interested in the dilemmas of modern liberalism as

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reflected in constitutional law will find Mr. Pritchett's book both interesting and useful.

ROBERT J. HARRIS.

Louisiana State University.

The American Political Mind; A Textbook in Political Theory. By FRANCIS GRAHAM WILSON. (New York: McGraw-Hill Book Company. 1949. Pp. ix, 506. $5.50.)

Uninspired, as a textbook is supposed to be, this one is well-informed, as a good textbook must be. It is historically informed, laying foundations in England and Europe for our colonial thought, and solid groundwork in the colonial era for our constitutional and subsequent periods. Particularly does the author stress the state constitutions as a warp and woof for our federal development. The treatment is historically informed, too, as to structure, since the outline is chronological rather than logical.

It is theologically informed, emphasizing religious orthodoxy as close to political conservatism and dissenting doctrines as fecund for radical and liberal thought. Of the Calvinists, as a group influential out of proportion to their numbers, the author well remarks: "Minority thinkers often make excellent political philosophers." Wilson's account of the rôle of religious thought in the evolution of democratic theory is better balanced than (what seems to me) the over-emphasis upon religion of Lord Lindsay in, say, his *Essentials of Democracy*. Characteristically cautious is Wilson's statement that the Puritans are important to us today "in part because of the rebels they produced."

It is patriotically informed, permitting no specious neutrality, à la Frederick Schuman, to obscure the stake felt by the author in the inception, outworking, and preservation of the doctrines of the North American state. It would be a disservice to the book for me to be misunderstood here. There is no adulation, no lack of "the critical spirit," no eulogy tacked on, or hortatory purple patches super-added. It is rather the quiet confidence organic to the whole treatment which will render the Republic, its structure as well as its ideology, a "Remembrance Rock" to our future student Justice Windom's. It is something, in times like these, to learn from a textbook that, as the author says, "the nation was born [and we may add *continues to survive*] when men were willing [*are* willing] to die that it should be preserved."

It is dialectically informed, but not as thoroughly as I should wish. It seems not too much to expect (though I admit a bias for organization less easy and more systematic than the chronological, from which nothing need follow save more time) that even inside the historical framework there be logical divisions (as for one example) of democratic theory into, say, liberty, equality, fraternity. The logical distinction which does run through this book is that of conservative-liberal; and I agree with the author that it is high time that the conservative element in our American tradition were given justice. Where this element is scouted, the treatment gets more watery (as in Parrington) the more time passes, or takes vengeance in a sort of back-handed reactionism (as in Beard).

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The author undertakes to bring back into focus the conservative strand of our national tradition, and this resolution is worthy of applause.

It is to the manner of assessing this task and the partiality of performance that I would enter a mild demurrer in an otherwise enthusiastic review of a solid performance. As to the assessment, conservatism would seem to me best conceived in terms of the dominance of the habitual and the customary. It is not an ideology at all, but a state of being which is hoped to be self-perpetuating because self-corrective. Its best rationalization would seem to be a clear statement and stalwart defense of the non-ideological. It is not so much "what the conservative doesn't say as how he doesn't say it" which counts. If so, the most fruitful strategy would be systematically to inquire what is *presupposed* in the articulation of the liberals. Just as and since liberal institutions can be built only by conservative men, it is the way certain thinkers treat their liberalism which makes them conservatives. It is, then, their "of course's," the "indeed's," the "to-be-sure's," that need out-writing. This is harder, may indeed be forbidding, but much more center-sourced than the easier job of classifying as conservatives certain men who normally regarded themselves in their day as liberals.

As to the partiality of performance, I am emboldened to this final remark by a striking sentence in the text (p. 404) to the effect that "the most influential single development in the social sciences . . . of the twentieth century" is "the secular or scientific theory of intelligence." If granted (and it is a most discerning remark), this needs development to the bottom in a book on "the political mind." Further homework on this profound diagnosis would, I predict, lead the author on from the silver mine which he has developed in Chapter XV, "Social Science Comes of Age," to a gold mine of meaning for, I hope, further editions. Its two gilded layers would, I surmise, pan out: (1) that George Herbert Mead (who gets no sub-head—no philosopher does; and, I believe, no poet, certainly not Emerson, Thoreau, or even Lowell) rates a political science medal of honor (I speak not as a partisan) for having made the foregoing remark more than a mystery of academic grace and having deeply influenced other seminal minds, and (2) that Mead's theory of the self, contrary perhaps to its own intention, is the deepest non-theological foundation yet laid in America for the conservatism which the author so widely emphasizes but only partially rationalizes.

T. V. Smith.

Syracuse University.

America Divided; Minority Group Relations in the United States. By Arnold and Caroline Rose. (New York: Alfred A. Knopf. 1948. Pp. xi, 342. $4.00; text ed., $3.00.)

It has been nearly twenty years since a book for the general reader and the undergraduate student has appeared which draws together the varied material on minority group relations in the United States. The welcome volume by Arnold and Caroline Rose not only fills this need, but also may have a broader

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audience among political scientists who want to catch up with the extensive minority group literature outside the immediate field of politics.

The study can be divided into two parts, a descriptive section, comprising the first eight chapters, and three chapters of analytical treatment. In each, the method is that of discussing one or a few minority groups on which the evidence is rich enough to be broadly illustrative. For this reason, major emphasis is placed upon Negroes and Jews. The opening chapter sketches the ramifications of majority-minority relations through various aspects of society, including international affairs. This is followed by a chapter tracing the history of minority groups in the United States and illustrating the thesis that the forms and intensities of prejudice have changed markedly over three centuries.

The following four chapters deal with the position of minorities in four sectors of American life. The first of these, on economic life, involves an excellent discussion of the interrelated forces blocking opportunity and facilitating discrimination, especially in the South. Chapter IV focuses on the degree to which equal protection of the law exists for such groups and the effects of various laws dealing with them. Chapter V emphasizes the problem of the access of minority groups to other political institutions and is followed by a chapter on the position of minorities in "social" life, in the sense of the more intimate and subtle relations between majority and minorities. Chapter VII, "Group Identification and Morale," uses these terms more or less synonymously to elaborate the proposition that the pressure from outside which creates a minority social group may not generate a positive identification with the latter, a circumstance which produces the most tragic maladjustments. This is followed by a chapter dealing with organization and disorganization in the minority community.

The three analytical chapters which close the book deal, respectively, with truths and falsehoods concerning physical and psychological differences among races and nationalities, the psychology of prejudice, and emerging trends.

The political scientist is likely to be somewhat disappointed by the chapter on political life. As a specialist, he will be critical because this is the most selective and incomplete chapter in the volume, illustrated by the absence of any reference to groups other than the Negro in the chapter bibliography. Starting out with a discussion of *bloc* voting by minorities, the authors take no consistent position regarding the extent and effects of this phenomenon, despite a flat statement (p. 134) that "this appeal for the minority vote has had a good effect on American political life." They continue with a discussion of urban politics and the South. Some generalizations in the latter section will appear extreme, for example (p. 141), " . . . Southern elections revolve around personalities rather than issues and . . . politicians do not have to take stands on issues or try very hard to solve real problems or meet the people's needs." This is followed by a discussion of national politics which is an able condensation of the Myrdal material, and a suggestive section on leadership problems and the political activation of minorities.

The authors' discussion of the psychology of prejudice (Chapter X) will be disappointing on other grounds. Almost a catalogue of "psychological" theories,

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it is the least successful chapter from the viewpoint of either the general reader or the student, although it is relieved somewhat by the summary paragraphs.

Despite these limitations, many of them inevitable in so ambitious an undertaking, the authors have largely succeeded in their central purpose. They have produced a book which will be highly useful to those seeking an introduction to the facts and problems concerning minority groups in this country.

DAVID B. TRUMAN.

Williams College.

The Pollsters; Public Opinion, Politics, and Democratic Leadership. By LINDSAY ROGERS. (New York: Alfred A. Knopf. 1949. Pp. vii, 239. $2.75.)

This timely volume is described on the publisher's jacket as "a pungent Demonstration that the Pollsters do not know what Public Opinion is and hence cannot Measure it." It purports to contain "a forceful Warning to those who rashly assume that the only Shortcoming of the Polls is their lack of Accuracy." The polls are further castigated as "a Threat to Representative Government and the Democratic Process." Finally, their influence on newspapers, legislators, and the public itself is denounced as "destructive." Political scientists, aware of Professor Rogers' rare skill with his pen, will expect to find a sensational mixture of wit and wisdom in this culminating polemic of his long campaign to expose what he considers to be the defects of the polls; and they will not be disappointed.

Political scientists should not expect to find in this brilliant production a definitive critique of the polls as instruments for predicting the results of popular elections. Finishing his book after the profound humiliation of the professional polling organizations at the presidential election of 1948, the author expresses regret that his criticisms of the pollsters should appear at a time "when they are hiding their heads in shame." He appears to be not greatly interested in the techniques of sampling the public and obtaining the answers of the members of the sample to the questions of the interviewers. For an authoritative analysis of the defects of the 1948 presidential polls, the student should consult the excellent report of the Social Science Research Council's Committee on Analysis of Pre-election Polls and Forecasts. For an acute and instructive interpretation of the lessons of that particular experience, he should peruse Messrs. Ernst and Loth's perspicacious essay, *The People Know Best; The Ballots v. the Polls* (Washington, 1949). Professor Rogers' discussion of the technical aspects of the opinion polls does not disclose the author at his best. But he makes the conclusion sufficiently clear that it was a great mistake on the part of the pollsters to permit the public to believe that on the basis of the polls they could forecast successfully the results of any election that is statistically close.

Professor Rogers' real interest is in the pollsters themselves, as the title of his book suggests. It is their assumptions concerning the nature of the political society of our time, their pretensions concerning their own "scientific" understanding of the nature of opinion, their claims with reference to the behavior

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of the public, their alleged aspirations to influence the course of representative government, and the effect of their activities on the democratic process itself, that chiefly engage his attention. Since Dr. George Gallup has been a leading spokesman for the pollsters, the polemic against the profession seems at times to become almost a philippic against its most conspicuous champion. This is unfortunate, because Professor Rogers' book is an important contribution to the literature of contemporary political philosophy. Dr. Gallup's reply to Professor Rogers, published in the Spring, 1949, issue of the *Public Opinion Quarterly*, betrays the same fault of excessive personification. It is to be hoped that a controversy which is capable of promoting the advancement of knowledge in the field of politics will not be diverted into a personal duel.

The truth is that we do not now possess a satisfactory theory of democracy, and that we greatly need a better understanding of the foundations of the democratic faith. Both the experiments of what Professor Rogers with uncharacteristic restraint calls the "ill-advised" pollsters and the speculations of what Dr. Gallup with understandable impatience calls the "arm-chair philosophers" have an indispensable place in the program of contemporary political science. Polling, despite the misadventures of the pollsters in 1948, is not going the way of phrenology, but until their techniques are improved and their aims clarified there will be a continued need for scrutiny of their findings by healthily skeptical political scientists.

ARTHUR N. HOLCOMBE.

Harvard University.

The Legislative Process; Lawmaking in the United States. BY HARVEY WALKER. (New York: The Ronald Press. 1948. Pp. vi, 482. $5.00.)

The objective of this volume, as stated in the preface, is to set forth the legislative process, congressional as well as state, as including "the machinery set up in the United States for determining and declaring the will of the people." Beginning with the nature of law, it covers the constitutional background and continues with political parties and pressure groups before enlarging upon legislative organization, procedure, and functions. It concludes with lawmaking by the executive branch, the courts, and direct popular action. Necessarily, to encompass all this in a single volume, some collateral material receives cursory treatment, as for example, comparison with the parliamentary system, mentioned under political parties and again in discussion of the relation of the executive to the legislature. Nevertheless, there is an abundance of analysis and amplification throughout.

Designed as a text for college courses, the book should prove, as the preface suggests, a convenient handbook for legislators and other public officials whose duties relate to the legislative process. For the teacher and student, it invites exploration of the side canyons or insists upon at least a glance at them in passing. For too many, lawmaking becomes visible only during a legislative session, which, in many states, is a period of only a few months out of each twenty-four. The wellsprings which swell the main stream to the flood crest of

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a legislative session of "statute-making" are too often not understood; nor is the continuous flow of the legislative process. The old "closed season" idea is still found in many state constitutions and in current thinking, namely, that the necessary evil of lawmaking must be confined to a brief "open season" during which "the legislature" may exercise its lethal powers over the rights and property of citizens. The author considers the "process" as integrated and continuous, beginning long before a legislature convenes and continuing after it adjourns.

For those familiar with the author's earlier *Lawmaking in the United States*, it may suffice to say that the new volume follows the same general outline. But much has been rewritten; considerable new material has been added; and a number of changes have been made to improve the book as a college text. The reviewer misses some things, as, for example, any reference to the pungent and sagacious comments of T.V. Smith after that philosopher had descended into the maelstrom of practical legislation. But such things are largely matters of selection and emphasis for which each reader may have his own predilection. One problem, of course, is that the diversities in the forty-eight states make distinction and generalization difficult at numerous points because of the paucity of special research studies. Consequently, some of the treatment has to be formalistic at times, with statements as to what the constitution, laws, or rules say, rather than how they work out in practice.

The author proceeds "to evaluate objectively the defects in this machinery and the impediments which have been allowed to accumulate in the path of its smooth operation." If he seems at times a bit sweeping in conclusions, his extensive research in the field, combined with his practical experience in state government, makes his comments and opinions thought-provoking and worthy of careful consideration. Many will agree that "the pendulum of public confidence is again swinging towards the legislative body. Legislatures have much to do in order to merit this new trust, but steps, halting and feeble though they are, are being taken."

FREDERIC H. GUILD.

Kansas Legislative Council.

Peter Norbeck: Prairie Statesman. BY GILBERT COURTLAND FITE. (Columbia, Mo.: University of Missouri Studies, Vol. XXII, No. 2. 1948. Pp. 217.)

This is the story of a simple farm boy who, by the force of circumstances and his own solid virtues, grew up to become one of the better known and one of the ablest of the prairie politicians and statesmen. Peter Norbeck was born in South Dakota, of a Swedish father and a Norwegian mother; although not himself an immigrant, therefore, he grew up under immigrant conditions, was thought of as a Norwegian turned American, and spoke English to the end with a powerful Scandinavian accent, something which in itself was politically helpful in South Dakota. Young Norbeck grew up on a farm, became a well-driller by profession, and made money at it; later he went into banking and made more money. Always a Republican, and at first not troubling to wonder why, he

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soon became aware of the peculiar problems of the South Dakota farmer, associated actively with the progressive faction of the party, and quickly graduated into the inner circle of that dominant group. He was elected to the state senate in 1908 and served three terms; he then served one term as lieutenant governor, two terms as governor, and was serving his third term as United States Senator when he died in December, 1936.

Peter Norbeck probably represents progressive Republicanism at its best. He was no zealous reformer, no great advocate of causes, but he was always interested in good government, honest administration, and the welfare of the people, particularly the farmers. He could not tolerate the South Dakota Republican machine crowd, earnestly supported the elder LaFollette against Taft in 1912, and went along reluctantly with the shelving of LaFollette for Theodore Roosevelt; later he listed himself in the *Congressional Directory* as a "Theodore Roosevelt Republican." As governor of South Dakota, he circumvented the Nonpartisan League by persuading the Republican legislature to enact much of the League's program (Chaps. 6–8); in Washington, he stood staunchly for such measures as the McNary-Haugen bill, found himself more and more at odds with his party leaders, and in 1936 finally declared for Franklin D. Roosevelt. The story of Peter Norbeck is, therefore, the story of the fight to make the Republican party progressive, particularly as that fight took shape in South Dakota, but also with reference to the national scene; and Norbeck's switch to FDR is an indication of the failure of that fight.

Peter Norbeck is also typical of the run of Midwestern progressives in their view of foreign relations. Essentially interested only in domestic policy, and ignorant of the vital connection between a stable world order and sound policy at home, they were strongly isolationist, and generally in opposition to the foreign policies of Wilson and Franklin D. Roosevelt. Norbeck at first favored the League of Nations and the World Court, but without enthusiasm; later he went along with his party in opposing the League and also finally voted against the Court. His biographer, in general warmly sympathetic with his subject, attributes Norbeck's attitude with respect to these matters to ignorance, bewilderment, uncertainty, and failure to understand the fundamental principle behind world organization. There was also in him a profound distrust of peoples and institutions other than the Northern and the Scandinavian. In a letter to the reviewer, explaining his position on the World Court, Norbeck wrote: "I believe that our group is better than some other groups. I am not willing to accept the judgment of the average of all the other groups. I would have much less objection to accepting the average judgment of the group of English-speaking and North European peoples—those who have a common background and similar ideals to our own. If the plan was for an International Court made up of North American and North European people, we would run very little risk in joining, but even then I think we should have the right to withdraw. I am afraid to be under the judgment and the will—even partially—of Japan, Russia, Balkan Nations, etc. I have very little confidence in about twenty out of the twenty-five Republics to the South of us, who have no stability and who do not

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respect our [their?] own elections. Really, I do not think we should give them any voice in our affairs, even through a Court."

The book is a useful contribution to the history of the progressive movement and a fine piece of biographical scholarship.

CLARENCE A. BERDAHL.

University of Illinois.

The Southern Political Scene, 1938–1948. EDITED BY TAYLOR COLE AND JOHN H. HALLOWELL. (Gainesville, Florida: The Journal of Politics. 1948. Pp. 235–567.)

The Southern Political Scene, 1938–1948, is a symposium of fourteen articles reprinted from *The Journal of Politics*, Vol. 10, Nos. 2 and 3, May and August, 1948, with an "Introduction" by the editors. "The war and postwar periods in the South," they state, "have witnessed many social, economic, and political changes. The present collection of articles represents an effort on the part of a group of scholars with academic or official connections in the South to assess these changes." The South is defined by the editors as including only eight of the ten states usually classified as Southern; Arkansas and Texas are excluded, while one border state, Tennessee, is included. Several of the writers, however, do not confine themselves to this rather arbitrary territorial limitation. Obviously, Arkansas and Texas, and even Kentucky, Missouri, and Oklahoma, could not well be excluded in the discussion of many important Southern problems. This lack of uniform coverage, therefore, somewhat detracts from the value of the symposium.

On the whole, however, the articles are of excellent quality, and the authors are recognized scholars and widely representative of the South. Social and economic developments are presented in articles by Howard W. Odum and B. U. Ratchford. Carl B. Swisher writes on "The Supreme Court and the South." "Foreign Policy and the South" and "Recent Southern Political Thought" are the work, respectively, of Marian D. Irish and Manning J. Dauer. Constitutional growth, governors, legislatures, trends in public administration, and judiciaries are the subjects of articles by Alden J. Powell, Cortez A. M. Ewing, H. Clarence Nixon, J. Alton Burdine, and Lee S. Greene, in the order named. Jasper B. Shannon contributes "Presidential Politics in the South," and articles on municipal government, rural local government, and governmental planning by Weldon Cooper, M. H. Satterfield, and Albert Lepawsky conclude the series. Thus is assembled in very useful and convenient form a wealth of up-to-date information on political and governmental developments of the last ten years in a rapidly changing section of the country.

Noticeably lacking, perhaps, are articles on the operation of the still dominant one-party system in the internal politics of the Southern states and on the developments in their electoral systems. These subjects receive only very incidental and subordinate treatments in articles dealing mainly with other matters. The impact upon each other of essentially Southern and Western

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politics in Texas and Oklahoma and of Northern and Southern politics in Kentucky and Missouri would have afforded additional topics of interest.

It is impossible to attempt a summary and analysis of the material contained in this symposium. For the most part, the studies are factual and seemingly quite accurate and objective. There is no undue defense of so-called Southern traditions or praise of recent Southern accomplishments. Nor is there much of that note of apology or reforming zeal which sometimes creeps into the writings of Southern scholars who have received their training in the North. Totally absent are those perhaps unconsciously self-righteous and sometimes not too well-informed judgments that are occasionally handed down by writers from outside the South. On the whole, one gets the impression that considerable improvement has taken place in many aspects of Southern political life during the last decade and that the South has been thoroughly awakened to many of its problems and has been making a very energetic and intelligent effort to better conditions. There are still many lags, some of them peculiarly Southern; but in quite a number of respects the deficiencies of the South are those not uncommon to other sections of the nation.

O. Douglas Weeks.

University of Texas.

Government as Employer. By Sterling Spero. (New York: The Remsen Press. 1948. Pp. xi, 497. $5.65.)

Here is an authoritative and comprehensive book on labor relations in government service. Much attention has been given in recent years to the growth of unions in government service. Professor Spero, in reasoned and thoroughgoing fashion, relates the history and the measure of success achieved in the relations between the sovereign employer and its employees.

The right to organize was a hard-won victory. The right to strike, while still not finally settled, is disposed of too readily by those who generalize upon the Boston police strike and the widely quoted dictum of Justice Holmes that, while a person may have a constitutional right to strike, he has no such right to public employment. The right of federal employees to strike was proscribed in the Lloyd-La Follette Act of 1912 and again in the Taft-Hartley Act of 1947. Nevertheless, strikes do continue in the public service, especially in local governments, where the question is clearly not settled.

The heart of the book is devoted to the rise of trade unionism in the public service. Efforts on the part of governmental employees to achieve a shorter work-day have been perhaps more successful than those in any other line of union endeavor. Earliest and most effective organization on the federal level was effected in the postal services. Unions in this field have been divided on the matter of independent action as opposed to close collaboration with the Department. An extremely interesting story is told of the prolonged conflict between the unions and Postmaster General Burleson in Wilson's administration. White-collar workers are organized primarily in the National Federation of Federal Employees, the American Federation of Government Employees, and the United Federal Workers Association. Many employees believe that the com-

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petition of these three rival organizations has stimulated conservative leaders and restrained zealots.

Organization in state and municipal services has proceeded in many parts of the country. Such organization, however, has by no means achieved the coverage effected in the federal service. Unions of firemen and policemen are widely accepted. The International Association of Fire Fighters has evidenced an interest in improved fire service and protection which compares favorably with its emphasis upon improved working conditions. Policemen are not so well organized within the labor movement as are firemen. This fact is explained by the currency of the Boston story and the general assumption that the Boston experience represented an uprising rather than a strike.

Within the teaching profession, conflict has existed between the National Education Association and the American Federation of Teachers. The NEA has worked closely for some three decades with the National League of Teachers Associations.

One of the principal issues confronting the government as employer is the problem of collective bargaining. Municipalities in general have been reluctant to admit the legality of bargaining contracts. The states of Virginia and Texas have made collective bargaining in the public service illegal. Similar obstacles have been met in connection with the federal service. The Tennessee Valley Authority, perhaps at the forefront of accepted practice, has entered into signed agreements with the Tennessee Valley Trades and Labor Council and with each of its constituent unions. Similar bargaining practices have been followed by the Department of the Interior in the management of the Alaska railroads.

Union efforts to achieve the closed shop have not been successful. For many years, the Government Printing Office operated as a closed shop. Union control in this agency, while still substantial, has not been able to hold the closed shop. Arbitration has likewise presented a difficult problem. The question arises whether the government can abdicate its authority to private arbitrators. In some instances, as in TVA, the knot has been cut, and arbitration is the accepted practice.

Withal, Professor Spero has produced a timely and important book. It represents a fitting addition to his already extensive bibliography in the field of labor in government. The book is exceedingly well written. It can hardly be omitted from the library shelf of the teacher of public administration.

JOSEPH M. RAY.

University of Maryland.

American Labor and the Government. By GLENN W. MILLER (New York: Prentice-Hall, Inc. 1949. Pp. xiv, 638. $5.50.)

Government Regulation of Industrial Relations. By GEORGE W. TAYLOR. Prentice-Hall, Inc. 1949. Pp. xii, 383. $4.00.)

We are developing into a highly-unionized economy, perhaps even into a "laboristic" economy. The requirements of an effective national labor policy, and also of labor "service" legislation (as distinguished from regulatory), will

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be problems of enduring importance. The two recent publications here reviewed have made distinctive contributions to greater understanding in these areas. Both books are packed with suggestive factual and analytical material for the political scientist, yet each was written by an economist. In the main, political scientists appear to have been slow in awakening to the fact that unionism has changed almost overnight from an "infant industry" requiring protection into large-scale business, evoking extensive public controls and at the same time calling for an increased quantum of service legislation.

Mr. Miller's book is well-suited for courses on government and labor. It covers the entire range of past and current legislation affecting labor, is thorough, and is admirable for the clarity of its style. Mr. Taylor's rich experience as a private arbitrator and as former chairman of the National War Labor Board makes his contribution "must" reading. His book is a balanced but hard-hitting statement of the case for private collective bargaining. His arguments for a national labor policy based on "voluntarism" are both challenging and persuasive.

Mr. Miller devotes considerable attention to delineation of the pattern of earlier legislation. He believes that most current controls were fairly well foreshadowed by the end of World War I, and he combines the historical approach with a functional division by subject-matter in a stimulating manner. Noteworthy in a textbook is the frankness and uncompromising nature of Miller's analytical remarks. In addition to his coverage of all significant labor legislation of both the service and regulatory types, he has included analysis of pertinent judicial decisions. This reviewer found his treatment of earlier legislation most satisfactory. However, the book's final section dealing with World War II controls, current state labor legislation, and the Taft-Hartley Act is also a competent piece of work. The documentation is not extensive. Many excellent sources are not cited. This is not a fatal omission in a text, but it somewhat limits the usefulness of an otherwise excellent book.

Mr. Taylor's analysis of public control of labor relations covers from the Wagner Act to the present time. The treatment of the National War Labor Board contains many valuable insights into our wartime experience. The author also has provided a thorough analysis of the achievements and failures of the President's Labor-Management Conference in 1945 and of the impact of the Taft-Hartley Act upon collective bargaining relationships.

In Mr. Taylor's view, an effective national labor policy must be based on "voluntarism," i.e., government regulation instituted with the acquiescence of the parties directly affected. He is highly critical of the "balance of power" approach common to both the Wagner Act and the Tart-Hartley Act, believing that it will assure peace and harmony in industrial relations no better than it did, over the years, in the field of international relations. Furthermore, says Taylor, a balance of power approach may well lead to complete governmental determination of the terms and conditions of employment. Mr. Taylor wisely notes that it is not sufficient for management and labor simply to be *against* government regulation; it is also necessary to be *for* collective bargaining. The

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inadequacies and failures of collective bargaining have sparked the trend toward increasing public intervention. Avoidance of additional controls depends on progress in improving the agreement-making potentialities of collective bargaining. Mr. Taylor has made many constructive suggestions for the improvement of private bargaining relationships.

Both books were written for the publisher's Industrial Relations and Personnel Series, edited by Dale Yoder.

HAROLD W. DAVEY.

Iowa State College.

Left, Right, and Center; Conflicting Forces in American Labor. By SIDNEY LENS. (Hinsdale, Illinois: Henry Regnery Company. 1949. Pp. 445. $4.00.)

This book is an excellent example of an ideological approach to the politics of labor. It is written from the standpoint of the Independent Left, the intellectual descendants of the philosophical anarchists, the native-American wobblies, the unshakable believers in the idealism and progressivism of Labor as an autonomous social force. The author has worked as an organizer, fought Stalinists and racketeers alike as enemies of the workingman, and observed at first hand the workings of the power system in the labor movement. Unfortunately, the book is not a monument to the author's observation of political conflicts within and between unions, to his analysis of trade union bureaucracy, nor to his appreciation of the relativity of union structure and behavior to the structure, functioning, and condition of the private enterprise system, all of which find documentation in it. The book is primarily an appendix to Mr. Lens' testament of faith in the unity and goodness of the working class, which he is confident will find ultimate reflection in an independent political organization, unsullied by the need for coming to terms with the interests of property or management.

The logical structure of the work falls into four parts, which are not indicated by the table of contents. The first and final chapters contain the preface and the message, and should be read together. Chapters II–IV trace in brief and readable style the broad outlines of American labor history from colonial times roughly to the end of World War I. Chapters V–XIV portray the period from 1919 to the present as a struggle between the racketeers and the leftwingers for control of the fringes of the labor movement. The main body of trade unionism is disposed of briefly in Chapter VII, entitled "Blinders and Shackles." While the author admits that "business unionists have won control of the labor movement, he presents these leaders and their supporters as weak, incompetent, outmoded, mere tools of business and government in trying to maintain "class peace." Chapters XV–XX, taking 1929 as the turning-point that sounded the death-knell for pure-and-simple unionism, paints the ensuing period as a twenty-year demonstration, particularly in the postwar years, of the inability of trade union leaders to fight effectively for the workers' interests in higher living standards, social security, and independent labor politics.

Mr. Lens' thesis is that the business-type union, as an instrument for improv-

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ing the material welfare of the workers, is unsatisfactory as a political instrument for achieving the mission and objectives of the working class. "This elementary, narrow, simple organizational form, with its big weapon, the strike, must either become subordinate to other, political instruments of the working class, or perish" (p. 403). The individual who accepts only the union goals of higher money wages, shorter hours, and better job security has failed to grasp the vision. The worker or union leader who reconciles himself to helping stabilize and protect the economic position of the employer or the industry is betraying the workers. Any one who places the interests of his union above ceaseless personal effort to transform other forms of social organization into more advanced instruments of working class consciousness and control is spiritually truckling to the bureaucrats. Thus, loyalty to the union as a free, autonomous association must be superseded by a higher loyalty to the dialectical unity of the working class as a whole. Upon this foundation, the author constructs an immediate program of (1) organizing the unorganized, (2) unionizing the unemployed, (3) replacing craft unions by industrial jurisdictions as a universal principle, (4) establishing a symbolic unity of labor at the national level, (5) reducing the power of national unions by decentralizing freedom of action to city centrals and regional inter-union councils, and (6) mobilizing the progressive and socialist elements in the unions to capture control from the business unionists and the Stalinists.

As a political *propagandist*, Mr. Lens is open to the charge of maintaining an outmoded "theory of the masses," or in modern language, of failing to analyze his audience adequately. He clings to the ancient view that the workingman can be bamboozled into joining labor organizations, only to have them run as stooge or dummy organizations for a political party. From the standpoint of *organization*, the author's almost pathological rejection of bureaucracy leads him to a fundamental vagueness and distortion in analyzing the distribution of power in the labor movement. The bureaucratic factor is precisely the element of power that fails to turn up in an analysis of the quantity or intensity of statements of ideological preferences. As a *strategist*, the author exposes a fundamental problem in showing that "business unionists" provide only an imperfect channel for controlling the deep-lying frustration and resentment of workers against the restraints of industrial organization and discipline. But as a person who sees in trade unionism nothing more than a "selling-out" of workers' interests, he is blind to the strategy of democratic group leaders, who are capable of recognizing both conflicting and complementary social interests, flexible enough to adjust to changes of status between their respective groups, and who possess the inner resources and self-restraint necessary to deal sympathetically with the explosive release of human tensions from time to time in open conflict on immediate issues.

It may not be sufficient for a society that professes to believe in freedom of association, intergroup recognition, and respect for human personality, to rely wholly upon a political strategy of short-run, piecemeal adjustment between group pressures. In that case, the test-condition of a "democratic leadership"

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theory is that group leaders are capable of sanctioning the rôle of government, not as the power instrument of a single dominant class, but as the vehicle for applying collective intelligence and foresight to the problems that drive men to dream of greater justice, freedom, and security.

AVERY LEISERSON.

University of Chicago.

Local Government Law; Text, Cases, and Other Materials. By JEFFERSON B. FORDHAM. (Brooklyn: The Foundation Press. 1949. Pp. xxx, 1060. $8.00.)

In the law-book field, there appears to be a trend away from the strictly "case" book and toward a book which combines, in some manner, illustrative cases with textual discussion. Dean Fordham's volume is a book of the newer type, and a good one. Though designed to serve the course in municipal corporations commonly offered in American law schools, the book, as its broader title suggests, is not concerned exclusively with municipalities, but gives attention as well to other units of local government—counties, townships, and special-purpose districts. It is the author's assumption, as set forth in his preface, "that the conventional course in municipal corporations has been too narrowly projected at the expense of *ad hoc* and non-urban general function units," and it is his purpose to provide a book which will serve as the basis of a broadened course. This purpose, in the opinion of the reviewer, has been admirably achieved.

Approximately a third of the book's space is devoted to the author's text, this constituting a matrix into which are fitted the case excerpts and other illustrative data. The latter include statutory excerpts and a variety of other materials, among the more lengthy exhibits being a comprehensive zoning ordinance and a 45-page municipal bond transcript. In the textual discussion, reference is made at appropriate points to these materials. In addition, the text is replete with references to judicial decisions, standard treatises such as those by Dillon and McQuillin, books, articles, and special studies and reports. Thus the law is presented within a framework of governmental practice rather than as a subject having no relation to public administration. The combination text-case method of organization also makes it possible to give the student a more realistic view of the entire field of local law and government, the text including at least brief comment on many phases of the subject not touched upon in the cases.

A distinctive characteristic of the volume, in comparison with its predecessors, is its shift in emphasis. Relatively less attention is given than in earlier books to matters of organization, powers, and responsibilities, and more space is devoted to certain subjects of prime current importance which are of recent development or have heretofore been neglected. Thus the three chapters on intergovernmental relations, finance, and community planning together comprise more than half of the entire volume, while, by way of contrast, the chapters on contracts and tort liability cover less than fifty pages each. No special consideration is given to administrative law, it being the author's opinion that

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problems in this field at the local level are not so peculiar as to require extended treatment apart from the general course in administrative law.

Another outstanding feature of the book is the recency of the materials selected for inclusion. A large proportion of the case selections bear dates within the last decade, and the other illustrative materials are equally current. Some of the old familiar cases which have been omitted are the subjects of textual comment, yet in the text also emphasis is consistently upon problems of present-day significance.

Dean Fordham's viewpoint is liberal and modern throughout. His text-case approach to the subject, and his treatment of rural as well as urban units, should give better balance to the course for which the book is intended. His emphasis upon current problems and recent materials is refreshing; and his critical summary, which is offered at many points, is stimulating. Though the volume is intended primarily for students and teachers of law, it will serve also as a valuable source-book for political scientists in the field of local government.

CLYDE F. SNIDER.

University of Illinois.

Wobbly; The Rough-and-Tumble Story of an American Radical. By RALPH CHAPLIN. (Chicago: University of Chicago Press. 1948. Pp. vi, 435. $5.00.)

Students of current American ideas will welcome this autobiography because it sheds a bright light upon indigenous American radicalism. Ralph Chaplin tells a simple tale of an American boy who revolted against the loss of his individuality in an industrial order. From a naïve idealism grew the syndicalism of the old Industrial Workers of the World. Contemporary readers will feel very much at home in the environment of 1919 which sent Chaplin to a federal penitentiary for his extremist views. *Wobbly* should be on the required reading list both of wide-eyed liberals and of the Un-American Activities Committee, for Chaplin does more to clarify how radicals are made than has any congressional committee. The internal warfare between the radical's belief in liberty and the regimentation of the new communistic order is clearly revealed. The American tradition of independence won with Chaplin, for he contends cogently that the Bolshevists won control of American radicalism through the influence of the Slavic elements in the United States.

Analysts of world affairs may well ponder the nationalism which exercises so wide an influence even in organizations set up to advance the classless and stateless society. Tito was foreshadowed by these splinter contests partly motivated by nationality and partly begotten by the quest for personal power. Specialists in civil liberties will sigh over the extraordinary delusions which overwhelm the lunatic fringe of both the Left and the Right. The brutality of mobs, the tenuous thread of justice, the passionate quarrels of conspiracy, as well as the selfless suffering of a Debs, are all poignantly delineated in the really terrifying pages of Chaplin's intensely human story. Sensitive readers will find their pillows uneasy if they reflect upon the issues presented. All will marvel at the objectivity and equanimity of a "scholar" whose research was done on picket

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lines and behind grim prison walls. *Wobbly* is a moving and valuable human document for the student of American institutions.

JASPER B. SHANNON.

University of Kentucky.

The Growth of English Representative Government. BY GEORGE L. HASKINS. (Philadelphia: University of Pennsylvania Press. 1948. Pp. xi, 131. $2.00.)

Originally delivered as a series of Lowell Lectures when Professor Haskins was a junior member of the Society of Fellows at Harvard, this book gives in revised and integrated form a picture of the development of the English Parliament from the Middle Ages until the seventeenth century. In the author's words, "it is not without interest to inquire into the beginnings of representative institutions, in order better to understand their nature."

The volume starts with a description of Parliament as it was at the beginning of the fourteenth century. This is followed by a discussion of the developing practice of consultation between king and barons—"counsel and consent." The author discusses the position of the lesser tenants first as involved in local self-government and then as being represented in the Commons. A chapter on "The Highest and Most Authentical Court" shows the confusion between what modern times have come to distinguish as legislative and judicial functions. The last chapter brings the story to the emergence of Parliament as the central and dominant force in the government.

This book—competent, intelligent, and scholarly as it is—shows a very different approach from that which produced the great works of English constitutional historiography of the past. It is not quite that the Webbs and Cole and Robson have replaced Stubbs and Maitland as the giants for this generation, though it is true that some questions which the nineteenth century considered peripheral are the central questions of today. It does still matter that careful and effective work is being done in medieval constitutional study, as Mr. Haskins himself and his footnotes show. But however much we may agree that the classical picture drawn by Stubbs and Maitland was unbalanced, we are not likely to think the modifications made by recent scholars are half as important as the picture they modify, until the time comes again for a great new work of interpretation and synthesis. Toward this, Mr. Haskins has made his contribution.

EUGENE P. CHASE.

Lafayette College.

Magna Carta; Its Rôle in the Making of the English Constitution, 1300–1629. BY FAITH THOMPSON. (Minneapolis: University of Minnesota Press. 1948. Pp. x, 410. $6.50.)

Professor Thompson, in a very fine book, has written an elaborate and scholarly account of the history of Magna Carta beginning with the reign of Edward II and ending with Sir Edward Coke's celebrated commentary in his

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Second Institute. It is a sequel to her essay, *The First Century of Magna Carta,* published in 1925. (See this REVIEW, Vol. 19, p. 860.)

Magna Carta, now usually thought of as a symbol of constitutional monarchy, of government by law, and of the rights of Englishmen, is also perhaps the greatest of those documents which are included in the Statutes of the Realm, and was for generations an important source of private law. Perhaps its greatest importance up to the days of Charles I was not as a symbol, but as a "statute." Miss Thompson, while never denying its importance as a symbol (a "liberty document"), is particularly concerned with it as a source of private law. She reveals its day by day use as such. Such a study as hers, based on manifold references to documents most of which have little meaning except to the specialist, lacks the bold outlines of a political tract. She is interested in examining the forest tree by tree, not in seeing it massed in bold perspective against the horizon. Nevertheless, most of her volume, to those who will read closely, is full of color as well as of information.

The volume begins with a discussion of the confirmations of the Charter, and its use in the plea rolls and the year books. It goes on to examine the Charter in its relation to liberty of the subject. It takes up the special interests of the City of London and of the Church. For the Tudor period, it gives the story of the printing and reprinting of the Charter and its use by chroniclers, by lawyers, and by the Puritans. A good half of the volume deals with the early Stuart period, when the Charter began to be used for controversial purposes. First, its history in the period when the king was ruling without Parliament, and then the long story of "a decade of Parliaments" (1621–1629), leads up to the final chapter, an analysis of Coke's commentary.

Woven in with the rest is the history of the life of Magna Carta as a document, not merely its confirmations but its printings and reprintings. Miss Thompson's first interest, however, is in the way in which the specific provisions of the Charter were used by suitors or defendants, by commentators, or by political groups. Collecting her information from an enormous variety of sources, the author makes the point, as perhaps no one has previously made it, that the Charter was a constant and living reality, a weapon kept sharp by constant use. Her volume is essential for those interested either in the growth of English law or in English constitutional development.

EUGENE P. CHASE.

Lafayette College.

Justicia Social y Reforma Constitucional. BY SALVADOR M. DANA MONTAÑO. (Santa Fé, Argentina: Instituto de Investigaciones Jurídico-Políticas de la Universidad del Litoral. 1948. Pp. 237.)

A few months ago, a constitutional convention assembled in Argentina. Its most urgent mission seems to have been the amendment of that portion of the constitution prohibiting the president from serving two successive terms. But it was not averse to making other changes in the fundamental law, which was the oldest in Latin America, and obviously in need of revision.

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Meanwhile arrangements were made for a National Congress of Philosophy to meet in Mendoza in the closing months of 1949. Dr. Salvador M. Dana Montaño, the director-general of the Jurídico-Political Research Institute of the University of the Litoral, was invited to present a paper to the Congress, and he responded with a lengthy consideration of the nature and form of the bill of rights in modern constitutions. But the sessions of the Congress were postponed; so Dr. Dana Montaño's own institute published the paper, apparently in the hope that it might influence the discussions in the constitutional convention.

The main thesis of the author is that the simple declaration of the rights of man, as found in the constitution of the United States and the 1853 constitution of Argentina, no longer suffices to express contemporary political thought. It must be coupled with modern economic and social guarantees, such as the right to work, the right to a decent livelihood, and the right to freedom from social insecurity.

This proposal is not breathtaking in its originality. Three-fourths of the national constitutions of Latin America already contain such social and economic guarantees. But Dr. Dana Montaño goes on to explain that the form of many of these guarantees is, in his opinion, totally unsatisfactory. Too many of the nations of Latin America have followed the lead of Mexico in virtually sweeping aside established property rights. They have laid the constitutional basis for socialistic régimes. That, says the author, is a serious mistake. But it is equally serious to place the rights of property above the rights of man. The ownership of property entails definite obligations. It has no moral validity unless property is used for the general welfare. Therefore *laissez-faire* liberalism must be swept aside, and property must be regulated strictly in the public interest.

Just what Dr. Dana Montaño hopes to accomplish through the adoption of a long list of social guarantees is not entirely clear, but he seems to be arguing for the establishment of some kind of welfare state. Socialism certainly is not wanted. The author makes that abundantly clear in passage after passage. Neither, he says, does he look with favor upon capitalism. "We are not enemies of capital or of liberty, but of capitalism and false liberalism" (p. 85).

Dr. Dana Montaño makes a very determined effort to identify his position with that of the Roman Catholic Church. "Like the Catholic Church, to which by the grace of God we unworthily belong. . . . " is one of his favorite phrases. Several of his chapters bear such titles as "Catholic Social Justice," "Christianizing the Property System," and "The Catholic Doctrine concerning Property."

In Perón's Argentina, where the Catholic Church is in high favor and social justice has become a potent political phrase, this volume should hit just the right note. Already it seems to have played its part in influencing the constitutional convention. In any event, the convention adopted a new bill of rights in substantially the form proposed by Dr. Dana Montaño.

AUSTIN F. MACDONALD.

University of California.

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An Introduction to the Study of International Organization. Fifth Edition. By Pitman B. Potter. (New York and London: Appleton-Century-Crofts, Inc. 1948. Pp. xvi, 480. $4.50.)

A standard volume on international organization, and which virtually has become a "horn-book" on the subject, has now gone into its fifth edition. The author, by training and experience, and especially through his long residence at the seat of the League of Nations, possesses unrivalled qualifications for the important task he set for himself. The importance of a work of this kind cannot be gainsaid. What American government has been over the years to domestic political science as taught in the United States, international government and organization has become to international political instruction.

In a carefully written preface, the author, while professing adherence to the major objectives of his earlier editions, nevertheless indicates certain changes in this edition, dictated by a number of considerations. The difficulties of presenting the facts of current international organization are frankly faced. Moreover, universal international organizations, as the League of Nations, are subject to constant mutation, and to possible dissolution. The United Nations, it is declared, is not free from these tendencies. For these reasons, the author undertakes "an analytical treatment, based largely on primary materials and contacts, of the fundamentals of the subject." An effort is made to emphasize the historical or evolutionary character of the subject, with the express reservation that activity in international organization, while old in point of time, is in its infancy in point of achievement. Reasons are advanced for treating the development of international institutions antedating the League of Nations and structure and functions separately, and for the place assigned by the author to international "government" and law in the wor d system.

The most significant chapter in the book is the first—a critical appraisal and evaluation of the nature of the science of international organization. While clearly beyond the average college student of the subject, this opening chapter can be nothing but a delight to the professional teacher and author. It reflects the philosophy of the author, growing out of upwards of a quarter-century of teaching, research, and administrative experience. It explains why some things are given major emphasis; why others are discussed only in a minor key; why some important subjects are omitted; and why certain stresses are preferred to others. That the national state must be the basic unit in any international system; that there must be a number of such states in any system; and that the states must be general in character rather than specialized, seem a restatement of obvious things. However, these are such common-sense fundamentals that the author should be commended for emphasizing them. Diplomacy, the conclusion of treaties, and international law are regarded as "pre-institutional" types of international organization, followed by conference, administration, and adjudication, together with special forms of coöperation achieved through international organs. Empire and cosmopolitanism are set off against inter-

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national organization as other possible forms of world unity. Where Eagleton stresses international government and law, and Mander stresses principles and foundations, Potter emphasizes organization, considered both historically, structurally, and functionally.

In presenting the bases of international organization, Potter treats all too briefly of the nation state, forms of international intercourse, international politics, and international law. Then follows a discussion of special forms of organization, including diplomacy and treaties, the international conference, and finally administration and adjudication. The main body of the work is Part III, entitled "General International Organization." The first three chapters deal, respectively, with forms of international federation and the functions and history of international organization. Then follow somewhat clinical chapters on the League of Nations and the United Nations. The volume ends with "Summary and Conclusions."

In so overwhelming a subject, a volume of 280 pages must leave much to be desired. The fundamentals are in the main soundly treated, but in such general terms as to be somewhat fragmentary. The transition from "pre-institutional" types and from the usual forms of diplomacy to general international organizations of the multilateral kind is not made as clear as it might have been. More could have been made of the place of international "government" as such in the organization scheme of things Dr. Potter has discussed. The place of law is inadequately treated. It follows that administration, which he describes as the "execution or application" of law, and adjudication (the application of the principles of law to disputes), two of the major functions of international organization, enjoy only summary and brief discussion. Throughout, the book is couched in general statements and terms, insufficiently buttressed by reference to institutions, past and present. Finally, a bare sixteen pages is given to a discussion of the United Nations.

These objections are overcome by certain considerations of the highest merit. The author takes a scientific approach to his subject, as against the "hortatory" approach of so many works in this field. In discussing function, he saves us from a tiring rehearsal of the details of structural organization, which are dull and unimportant, whether the institution be national or international. A sound and convincing philosophy underlies the entire discussion. While not often restated, it is disclosed in each principle set forth, in each institution examined. It reaches the level of an analytical treatise, avoiding the pitfalls of the average textbook on current data written to sell. The author does not lose his balance by embracing the "area" thesis of international relations, nor does he sacrifice international law and organization to the current fashion of "power politics."

An appendix of documents consumes 179 pages. Much of the material is important. In addition to being too long, some of the inclusions are disappointing. Treaties defining relations between states on a bilateral basis hardly illustrate genuine international organization. Reproducing the names of diplomatic representatives in the United States and elsewhere, the description of

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consular districts, and other data which may be found in diplomatic lists and foreign office registers is a waste of good paper. Most of the selections are admirable. An excellent working bibliography is appended.

The science of international organization is considerably advanced by the publication of this volume.

CHARLES E. MARTIN.

University of Washington.

Men and Measures in the Law. BY ARTHUR T. VANDERBILT. (New York: Alfred A. Knopf, Inc. 1949. Pp. xxii, 156. $3.00.)

There are two very significant matters about this compact little volume on jurisprudence: the author and the contents of the book. The author is a well recognized authority in American jurisprudence. He combines an amazing and almost crushing knowledge of the history and development of the law in both its substantive and procedural character with the actual performance of a practical jurist. He has long been a leader in the American Bar Association, especially in its sections on judicial reform and administrative law. It has been my pleasure to be associated with him in this work. One of his outstanding contributions to American jurisprudence as teacher and dean of the New York University Law School is the creation of the *Annual Survey of American Law*. His suggestion in this volume that American political science should make a similar contribution is worthy of serious consideration. My interest along the lines of his previous work caused me to regret his assumption of the chief justiceship of the state of New Jersey. However, the publication of this masterpiece, *Men and Measures in the Law*, indicates that the compass of his interests may not suffer, due to his capacity for a prodigious amount of constructive work.

The volume itself is absolutely unreviewable. It is a case of *multum in parvo*. It could itself be called a review of a ten- or fifteen-volume work on the process of the growth of the law, with snapshots of the leading figures in its development. It is a series of five lectures delivered at the University of Michigan Law School, and is divided into three major parts: (1) Taking an Inventory, (a) Law in the Books, (b) Law in Action, and (c) Law in the Law Schools; (2) The Growth of Substantive Law; and (3) Procedure—The Stumbling Block, (a) Historical Background, and (b) Suggestions for a Program of Procedural Reform.

It is clearly shown that the law has always experienced a steady development by judicial interpretation and in the last century by legislation, especially in the field of administrative law, and that now, however, we are experiencing a revolution in its development on almost an incomprehensible scale. The legal scholarship and research required for the understanding and the guidance of this development is undoubtedly one of our greatest and most important problems. A knowledge of the entire social science field is involved. The author believes a closer articulation between the teaching of the law and of other social sciences is necessary, especially on the graduate level.

The information compressed in the pages of this volume is amazing. It stands

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alone in its field. It contains exactly what students of legal science have wanted to know. It is a *must* book for lawyers, judges, and teachers of government and law. The footnotes are a valuable part of its contents because it is the kind of book that suggests a tremendous program of reading. It is far and away the most significant contribution to jurisprudence in recent times.

C. PERRY PATTERSON.

Human Rights in the Modern World. By ARTHUR N. HOLCOMBE. (New York: New York University Press; and London: Oxford University Press. 1948. Pp. viii, 151. $3.75.)

This short volume, presenting in book form the Stokes Lectures delivered by the author at New York University in 1948, represents a most sober and scholarly analysis, based largely on American experience, of the problem of an international bill of rights. Three of the six chapters and the epilogue, the latter discussing the Geneva Conference of March–April, 1948, on Freedom of Information, deal with the efforts in the United Nations to draft a universal bill of rights.

The promotion of respect for human rights was one of the primary concerns of the framers of the Charter, and one for which a special administrative agency was authorized. Seven times, once in the preamble and six times in the body of the Charter, the framers expressed their devotion to fundamental human rights and voiced their determination to secure the blessings of their possession to the peoples of the world. These provisions were the fruit of long months of planning, dating from President Roosevelt's message of January 6, 1941.

Almost from the beginning, the United Nations has been trying to implement these principles, holding numerous meetings and special conferences directed toward the ultimate drafting of both an International Declaration and an International Covenant of Human Rights. The author subjects these documents to pitiless criticism, both as to detail and as to main purpose, and in fact expresses the gravest doubts with respect to the entire enterprise as at present conceived.

Pointing a warning finger at the failure of many of the states in this country to make good the promises of the American bill of rights, the author concludes that progress toward uniform and high standards among the nations in this field is bound to be slow and unequal. He reminds us that what progress we have made is due mainly to the existence of a Supreme Court armed with a right of judicial review. But as yet no such court among the nations exists, and any plan for enforcement through international procedures will encounter the resolute resistance of nationalistic states taking refuge behind the doctrine of exclusive sovereignty, and its corollary, the domestic questions rule, which is written into the Charter itself. Because of these inherent difficulties, apparently insoluble for the present, and greatly exacerbated by the clash of two hostile ideologies, the author believes that the movement for an international guaranty of human rights should assume a much less ambitious form than that represented by current United Nations efforts; above all, any attempt to redefine

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the relationship of the individual to his own national state, he affirms, is doomed to disaster. There is, however, one task which is within the limits of practical reality, and that is the definition of the relation of the individual to international society as organized under the Charter. This would deal with the relations between persons in different countries, and between such persons and the general international organization itself, and the resultant rules would be enforceable, not by particular states, but by direct action through the competent organs of the United Nations. Apparently such rights would include freedom of international communication by radio, cable, news films, and travel, the rights of aliens coming before national courts to suitable protection by the laws, and the right of peoples to have the recognition or non-recognition of new governments and independent states determined upon sound general principles. Especially important would be rules to secure the prompt removal, or the reduction and eventual removal, of political barriers and economic restrictions that impede the flow of information across national frontiers.

In a world in which so many people of integrity and intelligence are prone to tilt at windmills when they consider problems of international organization, it is good to hear words of caution from a scholar of such repute. But in this reviewer's opinion, this book carries caution too far. The author is right, of course, when he fears that Russia and her satellites will never accept Western concepts of human rights. But he fails to show why these states will be much more disposed to accept his more modest proposals for the declaration of rights of individuals as members of the United Nations. Nor does he consider anywhere whether agreement on fundamental human rights among the nations other than Russia and her satellites would not constitute a notable step forward, despite the absence of agreement for effective means of enforcement. In this matter, the force of public opinion, as focussed in the great international forum, the General Assembly, should not be underestimated. Those who witnessed, at the last General Assembly, the desperate efforts of the delegate of the Union of South Africa to meet the charge that his government, in its treatment of Indian residents, was violating human rights know that in some circumstances public opinion may become a formidable international sanction.

JOHN B. WHITTON.

Princeton University.

On Power; Its Nature and the History of Its Growth. BY BERTRAND DE JOUVENEL. (New York: The Viking Press. 1949. Pp. xix, 421. $5.00.)

The nature of power is an old topic, but varying interpretations are given to it from period to period. In recent times, many widely different views of power have appeared—most recently Lasswell's incisive study entitled *Power and Personality* (1948), particularly the chapter on "Power and Influence." Unfortunately, M. Jouvenel seems not to be familiar with many recent analyses or to understand the new lines of approach indicated by contemporary writers. The translator explains that important works in this field were not available to the author while he was writing. This may be due in part to the fact that M. Jouvenel saw much of power in the field of discussion and action from 1936

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to 1943 in France. After many experiences with practical power, he managed to cross the Swiss border and there finished his *Du Pouvoir*.

M. Jouvenel deals first of all with what he terms the Minotaur—the modern state—his substitute apparently for Hobbes' seventeenth-century Leviathan. He proposes to deal with "The Metaphysics of Power," "The Dialectic of Command," with many of the historical aspects of power, with such large topics as revolution, totalitarianism, liberty, and security. It would perhaps be fair to say that his main concern is with the development of agencies or attitudes mediating between the individual and the state—between anarchism and totalitarianism.

It cannot be said that M. Jouvenel has been successful in the difficult task of developing a new "metaphysics" of power, or in the implementation of his general idea. He finds much difficulty in distinguishing between the terms power, authority, force, command, sovereignty, absolutism, in their varying phases. Nor does he pause to consider the nature of public and private government or public and private power.

He does not stop to consider in any systematic way the relation between power as a means and power as an end. He inclines to the doctrine that power must be essentially evil, following the well-known assertion of Lord Acton that "power tends to corrupt and absolute power corrupts absolutely." This insidious phrase has led many other thinkers astray, influencing them to forget that impotence may be as dangerous and corrupting as power. The evil is not in the power but in the uses to which it may be put.

M. Jouvenel concedes that power may at times be an agent of implementation for certain community purposes, but in the main his emphasis is on power as negative, austere, or even brutal—a recurring Minotaur, using his own term. However, it may also be maintained that power may be creative as well as destructive. For many centuries men have diabolized power, but it is often the means of enlarging the capacities of the group and the individual rather than a brutal limitation. Coöperation may replace a world of coercion and brutality as power tends to become trusteeship in an organized system wherein the consent of the governed is paramount. It is not power that is dangerous, but a misapplication of power in the pursuance of private or public ends or interests which may be pernicious. This is the beginning of wisdom in fruitful discussions of power.

Jouvenel is profoundly disturbed by democratic ideas and developments. While in no sense sharing the doctrines of the totalitarians on the one hand or the anarchists on the other, the distinguished author is confused in indicating his own positive doctrine and direction. For example, he refers to "the false doctrine of equality, so flattering to the weak, and resulting in a practice of chartered libertinism for the strong" (p. 374). In our day we find that upon corruption of will has been piled obfuscation of intellect. To this we may add the current equation of liberty with security, of justice with equality, of idealism with the exaggeration of man's moral capacity, and the "democratic" with whatever the user of the word happens to approve.

In general, Jouvenel seems to fear the misuse of power by the mass rather

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than by individuals or classes. When the "notables" lose their prestige and power, all is lost. These intermediate forces, such as the "financier," the "industrialist," the "journalist," are "all guilty of social misbehavior" because they have no professional code. Under such conditions, cohesion can be restored to society, he finds, only by power formulating in greatest detail the rules of behavior. "Conformity" must be secured by repression, but since there are not enough policemen to make this possible, conceptions of right conduct in our day must be forced upon the individual by the "squalid suggestions of mass propaganda"—one of his pet aversions. The totalitarian doctrines indeed, he finds, cannot be condemned without condemning also the "destructive metaphysic which made their happening a certainty," namely, that the state and individual are the only social realities.

What, then, is the way out? There the author falters, looking at some ill-defined pluralism under religious tutelage. He refers frequently, but somewhat vaguely, to the role of "spiritual authorities" and "intermediate social forces" (p. 377).

On the whole, the writer is far stronger in his doubts and fears, in his pessimistic view of modern social relations, than in constructive implementation of the ideals he affirms. He moves from the Minotaur in the beginning to dark apprehensions in the conclusion of his volume. He concludes that perhaps the recent season of "blossom and fruitfulness" was achieved at the cost of "the destruction of the forms in which their strength was stored" (p. 378). After the fireworks are over, he concludes, we come to "the darkness of a formless mass destined to despotism or to anarchy." Notables and elders have played many rôles in the drama of society, and indeed no social order can exist unless these or other *élites* carry out their essential purposes," to which the spiritual authority must continually recall them" (p. 376).

CHARLES E. MERRIAM.

University of Chicago.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Saving American Capitalism (Alfred A. Knopf, 1948, pp. xviii, 373, $4.00, text ed., $3.00), by Seymour E. Harris and others, is a stimulating discussion by twenty-four economists, political scientists, public officials, and historians prominent in public affairs. Of the thirty-one chapters, eight were written by Professor Harris, who served as editor. The purpose of the volume is to outline a "liberal" economic program. This it does in the best Keynesian tradition, particularly in chapters by Harris, Hansen, Abba Lerner, and Keyserling. In an opening chapter, Professor Harris sets forth "the issues" of the New Deal and beyond. A blueprint for a second New Deal is contributed by Chester Bowles. All the authors agree that a considerable portion of capitalism must be preserved; the problem of "saving" it becomes one of reform and adjustment to permit planning and welfare programs. Acceptance of a large part of our system of private enterprise is based on the fear that its disappearance may jeopardize

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our basic freedoms. The authors envision a "hybrid system which gives scope to adequate planning, to monetary and fiscal policy, to conservation of resources, to public spending for the general welfare, and to limited controls" which will "preserve capitalism" (p. xii). Emphasis is placed upon economic stability through government tax and spending policies, the maintenance of high levels of employment and income, and "adequate" but "not excessive" incentives for economic effort and risk. The work is frankly controversial. No well informed citizen can overlook these arguments for greater responsibility on the part of government in developing resources, "assuring" purchasing power, and "improving" its distribution. A survey of "liberal" philosophy is presented by A. A. Berle, Jr., the broad accomplishments of the New Deal by Arthur M. Schlesinger, Jr., a national labor policy by John T. Dunlop. Edwin E. Witte reviews pending developments in the old age and unemployment insurance programs. The book is the most comprehensive and readable account that has yet appeared of the dominent rôle of the state in current domestic and international affairs.—EDWARD W. CARTER.

The increasing use of voluntary arbitration in labor disputes has resulted in a wealth of recent case material. There is much of great value in this field for the political scientist. An excellent collection of recent arbitration opinions and awards is that of Harry Shulman and Neil Chamberlain, *Cases on Labor Relations* (The Foundation Press, 1949, pp. x, 1266, $8.00). Dr. Shulman is professor of law at Yale. He has served for several years as impartial umpire for the Ford Motor Company and the United Automobile Workers, CIO. Dr. Chamberlain is associated with the Yale Labor-Management Center. Each brings to his editorial assignment a rich background in the labor relations field. The cases are grouped under the following major headings: workers' security, job assignment, discipline, promotions and demotions, wages, hours, overtime and premium or penalty pay, holidays, vacations and other benefits, safety and health, rates of operation and workloads, and union security. Most of the cases concern questions of contract interpretation or application. A number involve arbitration of new contract terms, i.e., disputes over "interests" rather than existing contractual "rights." This pioneering casebook constitutes an impressive body of "industrial jurisprudence," resulting from the process of continuous, daily coöperation and adjustment. Fortunately, many of Professor Shulman's illuminating opinions and awards have been included. The volume abundantly supports the conviction of Shulman and Chamberlain that "the heart of the collective agreement—indeed, of collective bargaining—is the process for continuous joint consideration and adjustment of plant problems" (p. 3). In general, the selection and coverage of the cases are excellent. Editorial scissors have been competently applied. The absence of a table of cases and the overly broad classification of subject-matter may occasion some difficulty in use, but these defects are compensated for by inclusion of a more detailed subject index at the end of the volume. The bibliographical headnotes for each section are complete and very helpful.—HAROLD W. DAVEY.

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To provide the materials for a basic course on "the forces and factors behind political institutions" as a supplement to and possibly a partial synthesizing of the courses built on the institutional approach, Richard Carlton Snyder and H. Hubert Wilson have edited a new volume of readings under the title of *Roots of Political Behavior—Introduction to Government and Politics* (American Book Co., 1949, pp. x, 694, $5.25). The articles, representing all of the social sciences and written for the most part by a notable galaxy of both American and British contemporaries, are grouped into twelve sections ranging all the way from "The Human Equation in Politics" to "The American Ideology" and "The American Character." The only official document included is the "Charter of the Organization of American States." The articles bristle with provocative content as they develop the close relationships between politics and the other social sciences. Frank Tannenbaum asserts that "there is nothing in the life of man upon which the sovereign state does not lay a claim or with which it does not in effect interfere" (p. 167), and E. F. M. Durbin points out that "the social scientist must look through the psychological microscope; so must the politician" (p. 43). The editors have been brilliantly successful, not only in conceiving and blueprinting their new approach, but also in assembling this large collection of stimulating and, above all, pertinent articles. Excellent introductions for each section and article supply a unifying warp. To many it will appear that this book and the course based upon it might better be a conclusion for seniors than an introduction for freshmen.—ARNOLD J. LIEN.

The search for more effective ways of presenting the course in American national government has produced materials which should make it easy, were it not for the stubborn fact that the national government is so complex that much is yet to be depicted after one has drawn his best picture of it. The way proposed by Clinton L. Rossiter, *Documents in American Government* (William Sloane Associates, Inc., 1949, pp. vi, 346) is to supplement the usual textbook with primary sources. He has arranged sixty-four documents—excerpts, among others, from statutes, resolutions, treaties, codes, proclamations, and executive orders—in nineteen chapters. The material is organized to parallel standard texts. First is the Declaration of Independence, the Constitution, then the federal system, citizenship and suffrage, civil liberties, the political process, the President, Congress, and finally the functions. His last chapter is entitled "Government and Labor." Perhaps in recognition that the average student must have direction when he reads for the first time the formal language of official documents, Professor Rossiter has written short, pithy, refreshing, entertaining, and exceedingly helpful introductory paragraphs for each chapter, and shorter introductions for each of the separate documents. He has the happy faculty of sorting out the significant and of making things fall into place. At the risk of missing the point of the book, this reviewer is tempted to observe that despite the superiority of the document over the hearsay evidence in a text, the hearsay evidence which Mr. Rossiter put into his collection is the best

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thing in it. One may lament that there is not more Rossiter, even if that had meant fewer documents.—JOHN E. STONER.

The Ohio State Archaeological and Historical Society has published the second of its series on Ohio governors with the appearance of Harvey Walker's *Constructive Government in Ohio; The Story of the Administration of Governor Myers Y. Cooper, 1929–1930* (Columbus, Ohio: The Ohio History Press, 1948, pp. 249). Riding into office on the Hoover wave of 1928, with all of the members of the senate, and all but eleven members of the lower house, of his party, this Republican governor was in a strategic position to redeem campaign pledges for much-needed budgetary and accounting reforms. He made progress in the long delayed state building program, notably in the erection of a large state office building. Economic conditions when the Governor assumed office were propitious for a valuable salary standardization study. Governor Cooper had the wisdom to seek the aid of competent advisers in effecting as much of an administrative reorganization as the constitution permitted, and in the setting up of new fiscal controls. Prominent among those was the author of this study, who served as superintendent of the budget during the Cooper administration. For the administration of these services, the Governor drew heavily from party ranks. These officials are catalogued and briefly eulogized by the author. Students of government will find useful material in the description of the administrative devices established, but will wish the author had analyzed the political and economic influences which operate to prevent the state from reaping more lasting benefits from the excellent studies this and other administrations conducted. Students of history will wish the material might have been taken from less partisan sources.—S. GALE LOWRIE.

Students of legislation will find Armand B. Coigne's *Statute-Making* (Commerce Clearing House, Inc., 1948, pp. 293) very useful as a handbook. It contains a glossary of the commonest terms employed, explanations of the origin and introduction of bills, the steps through which they must pass before becoming law, and the influences which may be brought to bear upon them at each stage of their progress. The drafting of bills and amendments, the organization and procedures of legislative bodies, and the privileges and immunities of members are adequately treated. The most obvious criticism would be that the work attempts too much. It goes beyond the scope suggested by its title and treats the entire subject of American government and constitutional law, and even ventures into the field of international relations. Thus we find discussions of the initiative and referendum, the distinction between states and commonwealths, the status and government of territories and possessions, the making and alteration of constitutions, the nature of our federal union, the doctrines of separation of powers and checks and balances, the constitutional limitations placed upon state legislatures, and the making of treaties. These matters are not entirely unrelated to the subject of statute-making, but they are treated in

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greater detail than might be expected. The book contains so much useful information, however, that it is easy to forgive its over-inclusiveness.—ROGER V. SHUMATE.

Every practitioner in the field of political science will owe a debt of gratitude to the Bureau of the Census for its timely publication of *Historical Statistics, 1789–1945* (Government Printing Office, 1949, pp. 363, $2.50.) Into the compass of a single volume has been compressed a wealth of comparative statistics of concern to the economist, the sociologist, the public administrator, the social science investigator in general. Comparative data as to governmental revenues and expenditures, on the various levels of national, state, and local governments, plus breakdowns as to various types of subsidies and grants-in-aid, are but a few of the many kinds of tabular presentations of importance to governmental craftsmen, theoretical or practical. Evaluation of this material is tantamount to an appraisal of the raw facts of our national life expressed in arithmetic symbols. The book's usefulness to every serious student is apparent; should proof be required, *Historical Statistics* is in effect a statistical abstract of all the separate *Statistical Abstracts* which have been published by the Bureau of the Census.—CHARLES W. SHULL.

FOREIGN AND COMPARATIVE GOVERNMENT

Patently, the task of describing and analyzing the systems of local government and administration found in the major countries of the world is a tremendous one. In his *Comparative Local Government* (Hutchinson's University Library, 1948, pp. 207, 7/6), G. Montagu Harris, president of the International Union of Local Authorities, has attempted to bring within the confines of a small volume the notable points of interest about local government in various parts of the world. The result is a publication that should be useful to the inquiring general student or to an adult discussion class concerned with broad questions of governmental systems. Descriptions of institutions in individual countries are tightly compressed and therefore skim over much important material. For example, references to American counties are so cryptically phrased that only a very diligent reading of the sentences would prevent one from obtaining a completely erroneous idea concerning the structure, functions, and general setting of this unit of government. Throughout most of the book, however, the author uses the analytic method. Chapters are devoted to "Underlying Principles," "Areas of Local Government," "The Local Authority," "Officials," "Functions," "Finance," "Control," "Public Relations," and a discussion of the future of local government. The treatment of citizen participation in local policy-making is especially interesting. The reader who hopes to find an up-to-the-minute discussion of the place of local government in postwar France, of the reëstablishment of local government in Italy or in the western zone of Germany, will be disappointed. Brief mention is made of the extensive developments in national-local relations in the United Kingdom and passing reference is made to postwar trends in other countries, but for the most part the book is based upon prewar institutions. As might be expected, Mr.

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Harris pleads persuasively for development of national associations of local government authorities and for reënforcement of the International Union. His little book is devoted to much the same purpose as the organization he heads: "[It] carefully abstains from expressing any views for or against the system of any particular country; it gives. . . . the opportunity of comparing notes, and of learning from one another how problems, which are common to all, are solved in one or another country." It is to be hoped that Mr. Harris can tap the extensive sources of information available to him to give readers throughout the world a more extensive view of the position of local governments in the postwar world than was possible in this small book.—WINSTON W. CROUCH.

Das Weiss-Blau-Buch zur Deutschen Bundesverfassung (Regensburg, 1948, pp. 140), by Dr. Friedrich August von der Heydte, is one of numerous pamphlets published in Germany in connection with the controversies attending the drafting of the Basic Law finally adopted at Bonn on May 8, 1949. This particular broadside sets forth the Bavarian objections to an earlier draft of the Basic Law which aroused the author's ire because of its "attacks upon Christianity" and "upon the statehood of the *Laender*." The pamphlet provides the background for anyone who would like to understand what motivated the Bavarian parliament in voting against the Basic Law. This is true in spite of the fact that some of the draft's most objectionable features, from Dr. Heydte's viewpoint, were at least in part modified in the final version. Thus the basic rights are not declared "eternal," the provisions of the Weimar constitution concerning state and church are taken over, and the right of parents to educate their children, and more especially to make sure that they get a religious education if that is what they want, are now part of the Basic Law. What is perhaps more important, politically, the Basic Law also contains a number of further safeguards for the "statehood" of the *Laender*, largely due to the exertions of French and American military government. Bavarian conservatives, French nationalists, and American free-enterprisers were perhaps strange bed-fellows to achieve such a result, and only the future can tell whether between them they succeeded in preparing the necessary fences for a Communist development which only a federalistic constitutional structure can provide any hope for. Along with certain very sound positions, such as the author's protest against the *Bund's* getting any *Kompetenz-Kompetenz*, or right to determine the extent of its own legislative jurisdiction, Dr. Heydte also commits some egregious errors, such as the proposition that the guarantee of a free constitutional order in the *Laender* by the *Bund* violates federal principles. The contrary is true, as the federal constitutions of the United States, Switzerland, etc., show beyond the peradventure of a doubt. When the author claims that Hitler first used the Weimar constitution in 1933 in his climb to power, one wonders where the author was at that time, considering the fact that Hitler was given citizenship by Thuringia, which had been "conquered" by the Nazis, and only thus became available as a candidate for the presidency and the chancellorship. Nor will the careful student of constitutional history forget that it was Bavaria which sheltered Hitler and his minions, and not Prussia, which was governed by

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a constitutional and democratic majority until the aged Hindenburg was persuaded by wretched advisers to oust them by force. To be sure, these acts committed by men who more nearly than the government of Otto Braun represented what proverbially is meant by Prussia: the Junkers and militarists of the Hugenberg clique. But such reflections are beyond the rather restricted and provincial partisanship of Dr. Heydte's passionate discourse.—CARL J. FRIEDRICH.

As one of the Studies in Public Administration published under the auspices of the Institute of Public Administration, J. R. Jarmain's *Housing Subsidies and Rents* (Stevens and Sons, Limited, 1949, pp. 294, 25s.) is written for the housing specialist. Prepared originally in 1939–40, the volume examines the administrative and financial problems of subsidized housing in England and Wales during the period 1919–39. Since publication of the book was delayed because of the war, the author has added sections relating to postwar problems. There is recorded, in painstaking fashion, the trials and errors of attempting to devise economical, efficient, and equitable distribution of housing subsidies. The key rôle of government in the housing field is indicated by the construction figures, which show that from 1919 to 1939, when some 4,000,000 new houses were built in England and Wales, approximately 1,100,000 were erected by local authorities, and another 430,000 were provided by private enterprise with state assistance. Much of the material in the book is highly complex. And details are not spared; the reader will learn, for example, that "at Bedford, 1s. and 1s. 3d. extra per week was charged for the addition of brick-built outhouses." Perhaps the portion of most interest to American housers is the chapters dealing with "differential rent assistance," generally similar to "graded rents" in the United States, under which the rent charged bears a relation to the income of the family. In solving rent and other problems, it seems that local authorities in Britain have been granted more autonomy than those under the supervision of the U.S.H.A.-F.P.H.A. Mr. Jarmain, not satisfied that his country yet has found the most desirable subsidy and rent formulae, makes a case for systematic review of the whole question "in the light of the new conditions of living in the postwar world."—M. NELSON MCGEARY.

Actually completed in 1939, John Eldred Howard's *Parliament and Foreign Policy in France* (Transatlantic Arts, 1949, pp. 172, $3.25) is an analysis of foreign policy during the Third French Republic. The author implicitly accepts as a desideratum of democratic government that the public should, through its representative institutions, influence the development of foreign policy. This control Mr. Howard found to exist, especially during the last twenty years of the Third Republic, not only in the general way in which the French cabinet and Foreign Ministry were dependent on the support of a parliamentary majority, but particularly in the very real influence exercised by the committees on foreign affairs of the Senate and the Chamber of Deputies. The author believes that the committees' check on day-to-day developments served

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a useful function, and one that could not be performed by either chamber as a whole. Although attention is given to the necessarily *ex post facto* character of parliamentary action with respect to many of the most significant foreign policy decisions, nevertheless it is concluded that effective control increased in the period between the two wars and that there was no apparent reason why it should not continue to increase along with the growth in popular awareness of the import of international affairs. Whether this has occurred during the first years of the Fourth Republic is beyond the scope of Mr. Howard's study, and so, for that matter, is the question of how parliamentary control would operate when there exists, as at present in France, a fundamental cleavage between major political parties on the basic direction of foreign policy. The difficulties of even the Third Republic on this score are not stressed in this work as they have been in Micaud's *The French Right and Nazi Germany*.—LEON D. EPSTEIN.

Charles Flinn Arrowood's study of the theory of education in British political thought happily presents us with a profitable by-product in his *The Powers of the Crown in Scotland* (University of Texas Press, 1949, pp. xi, 150), a new translation of Buchanan's *De Jure Regni Apud Scotos* (1579). It is to be hoped that this excellent rendering of the text into English will serve both to reacquaint many with the actual work of this Scots thinker and to relieve the bulk of the profession from its dependence on secondary sources for its knowledge about a work highly important in the development of the revolutionary tradition of the sixteenth and seventeenth centuries. The translation is accompanied by a critical Introduction which gives a brief life of Buchanan and points up his central position in Scottish reformation politics. There is also a brief analysis of Buchanan's political theory, its sources and influence. The value of the translation is enhanced by the addition of explanatory notes which indicate many of the sources of Buchanan's numerous references and are, therefore, of material aid in assessing his position in the development and stream of Western political thought.—FRED V. CAHILL, JR.

INTERNATIONAL LAW AND RELATIONS

The first edition of Clarence Streit's *Union Now* appeared in 1939 after the author had had three hundred copies privately printed, since no publisher would at first accept the work. The second edition (Harper, 1949, pp. 324) appeared almost ten years later. The new volume adds some seventy pages to the text of the original edition, and in this latter part Streit gives his views concerning the significance of World War II, the establishment of the United Nations and the difficulties which have arisen between the West and the Soviet Union, and his proposal for a federation of the Atlantic nations. In his judgment, the United Nations is merely another League of Nations and subject to the same weaknesses: the veto has been much overrated, for in his view the process of national ratification—the "delayed veto"—would make any progress toward disarmament and peace impossible. He adduces ten fallacies in the universal approach to world federalism; analyzes the impact of the atomic bomb upon

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the need for a limited federal union; and indicates the changes which he would have made if he had been rewriting the original edition of *Union Now*. These main changes he lists as (1) a greater emphasis upon freedom, (2) the dangers in a merely European union, (3) the possibility of a federal union of Southern Asia, (4) the addition of Iceland, Luxemburg and the Philippine Commonwealth to his original list of the free nations which would form his nuclear union. The first objective must now be to call an Atlantic Federal Convention, for only by uniting the resources of the free nations can the Communist-Soviet menace and the menace of militarism be met, by providing sufficient power to prevent aggression while at the same time reducing the cost to individual nations in men, material, and money. Streit's proposals have been subjected to so much analysis that little remains to be said here concerning the pros and cons of his specific suggestions. One may perhaps point out that critics tend to adopt the philosophy of immediate world government at one extreme or power politics at the other, and to praise or discount a volume according to its place in the spectrum. One group will begin from the need and build a logical case; the other group from the difficulties and build its logical case, and the two are likely not to meet. They resemble the battle between the tiger on land and the alligator in the river. It is at this point, that of irreconciliability, that the political scientist may begin his most constructive thought. Bishop Stubbs once wrote that no principle or theory works entirely in isolation, and that the most logical conclusions from the truest principle are in practice false unless allowance is made for the counterworking of other principles accordingly true in theory and accordingly dependent for their practical truth upon coördination with the first. The late President Lowell wrote a book upon conflict of principles, and it may well be that this balance of principles is the mark of high statesmanship. But there may come a time when principles and policies stand in such opposition as to make any effective reconciliation impossible, and mankind may be at the present time attempting to reconcile the irreconcilable—thus illustrating Sir James G. Frazer's dictum that we shall not understand history unless we realize that man is able to hold and act upon contradictory principles at one and the same time. What the political scientist may do is to separate the contrasts which may be built into a deeper unity from those which may not, for example, to ask whether national sovereignty and democracy and other alternatives which seem to be held today are in reality compatible. It is possible that the present situation, because of the urgency of short-term problems, will lead the world deeper and deeper into contradiction and that an heroic effort must be made to state the essentials of the international problem in the light of new developments in science and the confused nature of political thinking in various parts of the world. If we are to do this, we should not take a writer, whether it be Streit or Burnham or any other, and simply reject his approach and policies and leave the matter at that. We should draw from each writer the general principles and particular proposals which he sets forth, weigh the contrasting elements, see whether they can be resolved or not, and above all, avoid con-

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centrating merely on the points of disagreement; we should make the points of disagreement occasions for further intense and constructive thought in the reasonable hope that this method may reveal a ray of light here and there, perhaps in terms of general principles, perhaps in particular proposals. Errors and inadequate conclusions may then form the stepping stones to higher judgment instead of being the occasions for further battle between the tiger and the alligator. From this point of view, Streit's contribution, whatever its limitations, has been one of great importance, and much in his work remains extremely challenging. Despite looseness of writing in some parts, it is a volume which in many sections repays reading.—LINDEN A. MANDER.

In her *War and Peace Aims of the United Nations, 1943–1945* (World Peace Foundation, 1948, pp. lxv, 1278, $6.00), Miss Louise Holborn has rendered a great service to political scientists and historians by bringing within the covers of one volume the official texts of agreements, declarations, communiqués, addresses of public officials, and other state papers of forty-eight states for the most vital period of wartime collaboration of the United Nations. This is the second volume of the compilation begun seven years ago by Professor Hajo Holborn and Louise Holborn. The first volume, including documents and addresses of the period from the outbreak of war to the first anniversary of the Declaration of the United Nations, was published in 1943. This second volume covers the period from the beginning of 1943 to the close of 1945. The first 178 pages are devoted to agreements, communiqués, reports, and addresses connected with the international conferences extending from that of Casablanca, January 14–26, 1943, to the Potsdam Conference of July 17–August 2, 1945. The documents included in this section trace the development of the war and peace aims of the United Nations and reveal the growing coöperation of the Great Powers in their war efforts. Often the texts of agreements and communiqués of the conferences tell only a part of the decisions reached. Here the speeches of national leaders are invaluable in filling in details. National policy is often revealed only in the addresses of leaders. Such addresses make up a large part of the volume. To have them in one volume is extremely valuable, for they are naturally most elusive and hard to locate. The editor has shown great skill in selecting the particular portions of speeches to be reprinted. Her summarizing headnotes, giving the background of events which preceded the collection of documents which follows, are of particular value. The volume includes a useful bibliography and an invaluable list of public officials of all of the states represented; and the adequate index increases its usefulness. As Sidney B. Fay points out in his Introduction, "one can hardly overestimate the value and convenience of a collection of this kind."—ROYDEN DANGERFIELD.

Students of international relations will find much of distinct value and interest in *Lessons on Security and Disarmament from the History of the League of Nations* (King's Crown Press, 1949, pp. 149, $2.25), by co-authors James T. Shotwell and Marina Salvin. This stimulating and provocative little volume,

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pregnant with ideas, includes a brief though comprehensive survey of the League's disposition of the numerous security disputes referred to it, and concludes that a great deal more was accomplished in a constructive way than is commonly supposed. Emphatic stress is placed upon the League's utilization of Article 11 of the Covenant, which opened the door to political as over against arbitral or legal, settlement of international disputes. Within this basic framework of preference for political compromise and for a more perfect procedure for conciliation, Shotwell and Salvin then proceed to dissect the various armament conferences, the Geneva Protocol, the Locarno Agreements, the Kellogg Pact, the General Act of 1928, and the little known Draft Treaty to Develop Means for Preventing War (1931). In their presentation of a penetrating and concise analysis of League action, or inaction, in the Manchurian and Ethiopian affairs, the authors are confronted with a fundamental dilemma. Having postulated the basic thesis for strengthened procedural processes through Article 11, they bravely pass judgment upon the League (and America by indirection) for not having brought Japan to terms through an economic boycott (p. 108). Britain is criticized for not having taken the risk of a naval war to check Italy (p. 108). These drastic conclusions can find justification not so much in procedural difficulties as in substantive questions involving decisive action against potential aggressors through sanctions or threat of war. The authors admit as much when they declare: "The combination of conciliatory techniques with coercive measures can be successful only if there is evident a strong will to back up the latter if necessary. Had the willingness to use military force as a last resort in support of the Covenant been evident to Italy, its use might have been unnecessary, and the lesson would not have been lost on an interested observer to the north (Hitler); had resort to it proved necessary, it might have been the means of preventing a more terrible war."—A. J. Hotz.

André François-Poncet's *The Faithful Years; Memoirs of a French Ambassador in Berlin, 1931–38* (Harcourt, Brace and Co., 1949, pp. xiv, 295, $4.00) has the movement, conversational detail, and personal portraiture of an historical novel. It moves chiefly by reports of conversations so lengthy that one may question their word for word accuracy. Unfortunately, few letters are reproduced. As the only major Western diplomat in Berlin who could speak German fluently, François-Poncet had exceptional opportunities for knowing Hitler and his associates. Appropriately, he founded his memoir on the portion of his dispatches which adventurously survived the war. The fateful years of this memoir extend from the last months of the Brüning government to the author's transfer to Italy shortly after the Munich conference. To this well-known story François-Poncet adds some detail and much vividness and drama. His writing is marked by numerous, sensitive character sketches built up with piles of adjectives. *The Fateful Years* shows how he informed the Quai d'Orsay at length about the permanence and viciousness of the Nazi régime; yet he was but a note-bearer and observer. His suggestions for moderate appeasement balanced by German concessions got nowhere. Despite his warnings, Tardieu

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long believed that Hitler's régime was tottering. It was French civil officials rather than army officers who wanted to act vigorously against Germany when the Rhineland was reoccupied. Impressed by Hitler's deference to Mussolini at Munich, François-Poncet concluded falsely, as he admits, that Mussolini could control the Führer. The union of the two dictators was fatal to both, he avers. The author's flair for developing the ramifications of small events appears as he shows how the assassination of King Alexander and Foreign Minister Barthou in 1934 materially aided the expansion of German influence in Yugoslavia. François-Poncet has succeeded in writing an entertaining, lively contribution to the history of our times.—GARLAND DOWNUM.

As the old imperial areas of Asia achieve political freedom, only to face the threat of a ruthless but deceptive form of imperialism from the north, Africa looms ever more distinctly as the continent of colonies. The attention given to this continent in international relations since the conclusion of World War I lends timeliness and importance to Rayford W. Logan's *The African Mandates in World Politics* (Public Affairs Press, 1948, pp. x, 220, processed, $3.00 cardboard and $4.00 cloth). The purpose of the author is primarily to trace the rise of German interest in and demands for the return of the former German colonies in Africa and secondarily to indicate the extent to which such demands found support in other countries, especially Britain and France. His story, based upon a painstaking examination of a considerable mass of material, with particular emphasis upon parliamentary records and German newspapers, begins with the destruction of the German Empire and ends with the defeat of Hitler's Reich. The evidence thus assembled shows conclusively that a growing segment of German opinion was genuinely interested in the return of the African colonies, but it does not prove that Hitler was ever fully converted to that program except for use in bargaining or as a frequent subject of propaganda. It is recognized, of course, that had the Axis won the war, these colonies, along with much of the remainder of the world, would have changed hands. As for Britain and France, it is obvious that had appeasement gone any farther, the African mandates very probably would have been included in some later attempt to meet another of Hitler's "final requirements," but the author does not adduce convincing proof that the Chamberlain ministry ever contemplated the return to Germany of any of the mandated areas except possibly as part of a firm world settlement. The book is marred by numerous errors in spelling and poor typing in the copy used for processing. Nevertheless, the author is to be commended for his objective and worthwhile study of an area that will assume increasing importance in world affairs, whatever happens to the trusteeship system.—CHARLES A. TIMM.

Michel N. Pavlovsky's *Chinese-Russian Relations* (Philosophical Library, 1949, pp. viii, 194, $3.75) fills some gaps in our knowledge of the association between two great states. The author has employed published primary and secondary material in Chinese, Russian, and other languages in dealing with a

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few of the many problems debated by scholars. Some of the Chinese materials used were made accessible to Pavlovsky by his position at the Aurora University in Shanghai. More than half of the text is given to a discussion of the nature of Russo-Sino-Mongol relations. Pavlovsky, who follows Palmerston in believing that great states have no permanent friends or enemies, only permanent interests, feels that Russian and Chinese interest in Outer Mongolia since the seventeenth century has proceeded largely from a concern for security and defense. Russia, he asserts, has shown deep interest in Outer Mongolia in proportion to the attempts of other powers, particularly China, to alter that area's status as a buffer state protecting Russia's Siberian frontier. This book includes, in addition, short essays on the rôle of the Jesuits in early Sino-Russian relations, the nature of the instructions given to an early Russian envoy to Peking, and the composition of a unit of Russian emigré troops in the Manchu armed forces at the end of the seventeenth century. Pavlovsky's work, translated into adequate English from the original French, is modest in aim, but of definite usefulness for both specialists and general readers.—SIDNEY HARCAVE.

Professor Carleton J. H. Hayes published his *Historical Evolution of Modern Nationalism* in 1931. Since that time, the book—a pioneer in its field in the United States—has become an indispensable classic. Historians and political scientists will therefore welcome a new, though unchanged, edition (Macmillan Co., 1949, pp. viii, 327, $4.00). In his now almost twenty years' old book, Professor Hayes has taught the American public to view nationalism with a greater understanding and to distinguish its various trends. The categories which he established—the humanitarian nationalism of Herder, the Jacobin nationalism of the French revolution, the traditional nationalism of Bonald, the liberal nationalism of Mazzini, and the integral nationalism of Maurras—have been generally accepted. Professor Hayes rightly treated of nationalism as an idea, a body of doctrine, a political philosophy, and thus established the study of nationalism as a separate discipline, and not simply as a part of social history or of institutional practice. In his seminar at Columbia University, he has raised up a whole school of able younger scholars in the history of modern nationalism, to whom we owe a number of important studies which in themselves were pioneering works in the field, like Koppel S. Pinson's *Pietism as a Factor in the Rise of German Nationalism.* Now it will be possible for a new generation of students to feel grateful to Professor Hayes for the clear outline and the suggestive help which his fundamental treatise offers.—HANS KOHN.

George E. Kirk's *A Short History of the Middle East* (Public Affairs Press, 1949, pp. 301, $3.75) will be greeted with satisfaction by students of that area. Teachers will find it a useful, though somewhat condensed, textbook, lack of which has been hitherto acutely felt. Diplomats and journalists will appreciate it as an excellent reference source, and the general reader will find in it an amazing amount of information not contained elsewhere within the framework of

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a single, easily readable volume. Mr. Kirk reviews the history of the Middle East from the rise of Islam, around A.D. 600, to modern times. The story is brought quite up to date, with important events as late at 1948 given adequate treatment. The author covers the area of the Middle East proper, i.e., its Asiatic and African sectors. Not only the Arab core, but also the Turkish and Iranian rimland, is included. This is probably the reason why the slow process of disintegration of the Ottoman Empire in its European possessions receives only summary mention here and there, mostly in connection with other, non-European developments. It is to the credit of the author that, apart from political and military events, he describes also social, cultural, and economic changes in the area, thus making his history as complete as possible within the brief framework of the volume. The book is supplied with a number of good maps on which the reader may find every important change of sovereignty in the Middle East over the last fourteen centuries. College libraries and teachers of history and international relations will not regret it if they will consider Mr. Kirk's book a "must" among their newly planned acquisitions.—GEORGE LENCZOWSKI.

With Norman J. Padelford as editor and F. Pauline Tompkins as associate editor, the fifth number of the semi-annual *Current Readings on International Relations* (M.I.T. Publications in International Affairs, Addison-Wesley Press, 1949, pp. x, 307, $1.50) makes its appearance and offers a wide variety of documents and articles on world affairs, all of which are dated 1948. Among the better known contributors are Samuel Flagg Bemis, Chester W. Nimitz, Hanson W. Baldwin, Carl J. Friedrich, and Kenneth Scott Latourette. Each reading is introduced by brief and reserved comment by the editors. Included in the readings is a clear analysis of "The Use of the Veto" by the editor. He is of the opinion that the use of the Great Power veto has disrupted the working of the Security Council by delaying action and by confusing and increasing the complexity of the process of negotiation. The book will have its uses in classes in diplomacy, international organization, and recent American history.—RALPH A. NOREM.

POLITICAL THEORY AND MISCELLANEOUS

In his *Kingship and the Gods* (University of Chicago Press, 1948, pp. xxiii, 444, $5.00), Henri Frankfort examines what may be called the religious, indeed theological, foundations of the royal office in ancient Egypt and Mesopotamia. Only professional students of the ancient Near East can estimate the cogency of Frankfort's conclusions. But anyone interested in early history or in the conceptual bases for primitive government will find the book fascinating reading, if only because of the wealth of otherwise nearly inaccessible material presented. The book represents a consistent and determined effort to penetrate into primitive modes of thought, and Frankfort emphasizes that our own patterns of intellection and our very use of language hinder, if they do not actually prevent, our apprehension of the mental processess of men in the first stages

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of true civilization. The author's basic distinction is between the attitude toward the Pharaoh in Egypt and that toward the ruler in Mesopotamia. In Egypt, the king is completely divine, himself the personification of the divine world order and the ultimate focal point of human society. In the Land of the Two Rivers, the ruler is, ordinarily, merely human and is himself dependent on divine assistance. The essential difference between the two cultures is in their attitude toward the monarch, and this difference is demonstrated in exhaustive detail. Frankfort makes most effective use of the artistic monuments of the respective areas to support his thesis. It may well be that in his desire to present in its totality the attitude of each of these two civilizations toward its rulers he has not emphasized sufficiently the concrete historical development of these ideas within the two areas.[1] This is not a matter on which the present reviewer can pretend to judge. But *Kingship and the Gods* will surely remain an impressive contribution to the study of the psychological foundations of early government. It only remains to add that the University of Chicago Press has produced a beautiful and distinguished book.—CHARLES EDSON.

In *Party Politics in the Age of Caesar* (University of California Press, pp. 255, $3.50), Lily Ross Taylor has explored the bitter partisan strife of the last years of the Roman Republic, particularly 70 to 50 B.C., thus adding another significant study on Roman political parties to those of Matthias Gelzer, Anton von Premerstein, and Ronald Syme. Because of the extensive sources of detailed first-hand evidence, of a one-sided character, this period has been a fruitful area of investigation and interpretation. *Amicitia* is the word that best characterizes the Roman party relationship, and the author sees a marked analogy to Roman politics in the preparatory maneuvering of personalities with few pretenses of providing programs at the American national nominating conventions. The book is therefore concerned primarily with personalities and not with programs—"with members of great noble houses attended by masses of adherents." A new point of view is presented in the analysis of the voting system. The manipulation by opposing groups of the Roman state religion, important in elective and legislative assemblies, throws further light on the mechanics of Roman politics. A chapter is devoted also to the political significance of the criminal courts. In the final three chapters, the author examines the political groupings and the emergence of a single party. Here the major rôles are played by men who were associated with the conflict between Catonism and Caesarism, highlighted by details of intrigue and corruption, the propaganda of the period, and the ideologies of Cato's republicanism.—BELLE ZELLER.

Students of political theory will welcome this first English translation of two works of the Counter-Reformation. Both Giovanni Botero's *Practical Politics* and Pedro Ribadeneyra's *Religion and the Virtues of the Christian Prince*

[1] See the observations of M. I. Finley in the *Political Science Quarterly*, Vol. 63 (1948), 275–281.

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Against Machiavelli (Country Dollar Press, 1949, pp. xxvii, 355, $5.00) are translated and edited by George Albert Moore. Botero, an Italian, and Ribadeneyra, a Spaniard, sought as churchmen to develop true maxims for genuinely Catholic rulers. Each attempted to combine Machiavellian realism with Christian morality, while repudiating Machiavelli's separation of Christian ethics and politics. In so doing, they often condoned expedients comparable to those which they had previously attacked as Machiavellian. Historical and religious examples are used to prove that Catholic "reasoning from interest" is very *Practical Politics* (p. 223) and entirely compatible with that true religion which is the foundation of the state. *Practical Politics* is the more broadly conceived work, treating "the means suited to found, maintain, and amplify" "firm dominion over people" (p. 35). Many of Botero's precepts are shrewd and illustrate a clear-headed rationalism similar to Machiavelli's. Ribadeneyra is more preoccupied with the defense of religion against Machiavelli and the "politicians" (Bodin and Duplessis-Mornay). The fact that he lumps them together as enemies of the church illustrates his more limited perspective and his failure to grasp their major ideas. A twenty-eight page introduction to *Practical Politics* by Carlo Morandi of the University of Florence is scholarly, critical, and helpful. The lack of a comparable introduction for Ribadeneyra is to be regretted. Overshadowed by their contemporaries in terms of basic contribution to sixteenth-century political theory, Botero and Ribadeneyra may still be read by those interested in the political thought of the Counter-Reformation and a sixteenth-century response to certain features of Machiavelli's thought.—Neal Riemer.

American political scientists owe the publishing house of Barnes and Noble a vote of thanks for undertaking to reprint the celebrated Hearnshaw (F. J. C.) series on social and political thought. We have enjoyed reading these informative and sprightly books for many years. These volumes, of which the first appeared in 1921, were all published in England, and have long been out of print. They are no longer collectors' items in the rare book market. Now at long last we can buy them, at $4.00 each, a price which in the present state of partial disinflation is not unreasonable. These reprints are facsimiles of the originals, except for the fact that errors in the original volumes have been corrected. Of the nine volumes, four titles are now ready: *Medieval Contributions to Modern Civilization, The Social and Political Ideas of Some Great Thinkers of the Renaissance and Reformation, The Social and Political Ideas of Some Great Thinkers of the Sixteenth and Seventeenth Centuries*, and *The Social and Political Ideas of Some Representative Thinkers of the Age of Reaction and Reconstruction*. The publisher promises that the remaining five volumes will be reissued in the near future; they will be more than welcome as old friends.—David Fellman.

In his *Citizen Thomas More and His Utopia* (Princeton University Press, 1949, pp. vii, 230, $3.50), Russell Ames opposes the theses of R. W. Chambers, who recently portrayed More as one who dreamed of reforming society in

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accord with the best elements of mediaeval thought and practice, and Karl Kautsky, who in 1890 discussed More in terms of a central conflict between capitalists and workers in England. Mr. Ames presents More as lawyer, politician, mercer, and citizen of London, a middle-class humanist critic of a decaying social order dominated by landowners. He notes that the odd inclusion of merchants in socialist Utopia must have had the practical purpose of suggesting reforms in England's handling of merchants' problems. An elected Utopian *princeps* is a mayor, rather than a prince, and the general political organization is a league of cities. Numerous footnotes, a full index, and several interesting appendices add to the volume's value.—MARGARET SPAHR.

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——— *Judiciary committee.* Election of President and Vice President. Hearings . . . 81st Cong., 1st sess., on S.J. Res. 2 . . . Washington: Govt. Ptg. Off., 1949. 215 p.

——— *Labor and public welfare committee.* Labor relations, hearings, 81st Cong., 1st sess., on S. 249 . . . Washington: Govt. Ptg. Off., 1949. pts. 1–4. 2304 p. $1.25, $1.00, $1.50, $1.50, respectively.

——— *Rules and administration committees.* Limitation on debate in Senate, hearings, 81st Cong., 1st sess., on S. Res. 11, 12, 13, 15, and 19. Washington: Govt. Ptg. Off., 1949. 240 p.

Justice Department

Immigration and naturalization service. Gateway to citizenship, by Carl B. Hyatt; by Edwina Austin Avery. Revised 1949. Washington: Govt. Ptg. Off., 1949. 256 p. 75c.

Library of Congress

Legislative reference service. Index to the reports of the commission on organization of the executive branch of the government and to supporting task force reports. Washington: Govt. Ptg. Off., 1949. 77 p. (Also as Senate committee print, 81st Cong., 1st sess.) Presidential inaugurations, selected list of references. Washington, 1949. 59 p. (processed) 40c.

Selective Service System

Special monograph 1, v. 1: Backgrounds of selective service: Historical review of principle of citizen compulsion in raising of armies; prepared by Robert E. Jackson, jr., final editing by Mapheus Smith. 1947. Washington: Govt. Ptg. Off., 1949. 288 p. $1.00.

State Department

In February, 1949, the Department inaugurated a new series of "Current reviews of economic and social issues in the United Nations." It is designed to serve two purposes,

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"to fill the growing need for readily accessible information in summary form on current activities and problems in this field, and to provide the many organizations and groups throughout the country with reliable information which can be adapted for the use of study and discussion groups and other program needs." It is monthly and free in limited quantities.

The following in the numbered series of State Department publications have appeared, all from the Government Printing Office, 1949. Since most of the numbered publications appear also in the Treaties and other International Acts series, these are not listed here.

3437. United States participation in the United Nations. Report by the President to the Congress for the year 1948. 303 p. (with extensive bibliography.)

3466. Progress in European recovery and the road ahead. 6 p.

3467. Sixth report to Congress on assistance to Greece and Turkey, for the period ended December 31, 1948. 41 p. 20c.

3485. The world audience for America's story. 127 p. ("Limited distribution.")

3485a. United States advisory commission on information, Semiannual report to the Congress, March, 1949. 127 p. 65c.

3487. Report of the Joint Brazil-United States technical commission. 321 p. $1.00.

3488. America's rôle in economic development abroad. 6 p.

3492. World trade and the United States. n.p. maps. 20c.

3495. Developing international understanding. 4 p.

3526. The Bonn constitution. Basic law for the Federal Republic of Germany. 52 p. 15c.

War Department

Strategic services office. Research and analysis branch. A wide variety of publications formerly restricted has now been released. These have to do with economic controls and military government in Europe, Japan, etc., and particularly with German military government of occupied countries. They are all processed and there is no price attached.

STATE AND TERRITORIAL

ALABAMA

University of Alabama. Bureau of public administration. Metropolitan county; a survey of government in the Birmingham area. Weldon Cooper. University, Ala., 1949. 165 p. tables, charts.

CALIFORNIA

Legislature. Senate. Interim committee on state and local taxation. Report: pt. 1, The cost of selected governmental services in California; social welfare; public schools. Sacramento, 1949. 462 p. tables, charts.

Los Angeles. Know your city. Los Angeles yearbook, 1948. 124 p. (An interesting outline of city government and a directory of its departments.)

University of California, Berkeley. Bureau of public administration. Effect of inflation and growth on city costs and services: case study of Berkeley, California. J. C. Bollens and Stanley Scott. Berkeley, 1949. 11 p. (mim.) 50c.

——— Local revenue problems and trends. J. R. McKinley. Berkeley, 1949. 59 p. (mim.) $1.25.

——— Recent state labor legislation. E. F. Staniford. Berkeley, 1949. 56 p. (mim.) $1.25.

HAWAII

University of Hawaii. Legislative reference bureau. Territorial legislature organization and procedure. Honolulu, 1949. 34 p. (mim.) (Report no. 3, 1949.)

INDIANA

Indiana University, Bloomington. Institute of politics. The Bloomington, Indiana, municipal campaign of 1947, by Jack Landon New. Bloomington, 1948 [c. 1949.] 33, 29 p.

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——— Indiana local elections, 1947: tendencies toward non-traditional voting, by John Harvey Wheeler, Bloomington. 1948 [c. 1949] 14 p.

KANSAS

University of Kansas, Lawrence. Bureau of government research. An introduction to Kansas finance: state government, by Jack F. McKay. Lawrence, 1949. 30 p.

KENTUCKY

University of Kentucky, Lexington. Bureau of government research. The constitution of Kentucky; suggestions for revision. Papers by Thomas D. Clark and others. Lexington, 1948. 118 p.

MAINE

Bowdoin college. Bureau for research in municipal government. Financing local government. L. L. Pelletier, Brunswick, Me., 1948. 190 p. tables. (Municipal research series no. 12.)

MARYLAND

State fiscal research bureau. Local government finances in Maryland, 1947–1948. First report to the governor and the general assembly. Baltimore 2, City hall, 1949. 87 p. charts.

MASSACHUSETTS

Legislature. Special commission established to make an investigation and study relative to the advisability of abolishing the Presidential primaries. Report, Dec. 1, 1949. [1948.] Boston, 1949. 22 p. (House doc. no. 2048.)

MICHIGAN

University of Michigan, Ann Arbor. Bureau of government. The population of Michigan, 1840 to 1960; an analysis of growth, distribution, and composition, by Amos H. Hawley. Ann Arbor, University of Michigan Press, 1949. 116 p. maps, diagrs. (Michigan governmental studies, no. 19.) $1.50.

——— *Law school.* The Constitution and socio-economic changes; five lectures . . . by Henry Rottschaefer . . . Ann Arbor, 1948. 353 p. (The Thomas M. Cooley lectures, 1st ser.)

MISSISSIPPI

University of Mississippi. Bureau of public administration. Highlights of state finance. R. B. Highsaw and E M. Johnson, Jr. University, 1948. 51 p. tables, charts. (State administration ser. no. 4.)

TENNESSEE

University of Tennessee. Bureau of public administration. Rescued earth, a study of the public administration of natural resources in Tennessee, by L. S. Greene and others. Knoxville, Univ. of Tennessee Press, 1948. 204 p. tables. $1.80.

TEXAS

University of Texas. Institute of Latin-American studies. Political, economic, and social problems of the Latin-American nations of southern South America. A. E. Taylor and others. Austin, University of Texas Press, 1949. 107 p. bibl. (Latin-American studies VI.)

VERMONT

University of Vermont, Burlington. Agricultural experiment station. Governmental costs and taxes in 150 Vermont towns, by S. W. Williams. Burlington, 1948. 28 p.

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WASHINGTON

University of Washington, Seattle. Communism and academic freedom. The record of the tenure cases . . . including the findings of the committee on tenure and academic freedom and the President's recommendations. Seattle, University of Washington Press, 1949. 125 p.

FOREIGN AND INTERNATIONAL

ARGENTINA

Universidad de Buenos Aires. Facultad de derecho y ciencias sociales. Instituto de derecho internacional. Política internacional de la República Argentina, [por] Lucio M. Moreno Quintana. Buenos Aires, 1948. 74 p. (Publicación No. 1.)

——— *Departmento de acción social universitaria.* Reforma de la Contitución argentina. Buenos Aires, 1948. 237 p.

BRAZIL

Congresso Câmara dos deputados. Comissao da Constituicao. Annias da Comissao da Constituicao, pareceres e relatoriós. . . . Rio de Janeiro, Impr. Nacional, 1948. 488 p.

CHILE

Universidad de Chile, Santiago. La elección de presidente de la república. [por] Eduardo Torres de la Fuente. Santiago, 1948. 73 p. (Thesis)

GREAT BRITAIN

British information services, Reference division. The British colonial empire in 1948. New York, 30 Rockefeller Plaza, 1949. 59 p.

——— The European recovery program and Britain. New York, 30 Rockefeller Plaza, 1949. 24 p.

——— The North Atlantic Treaty. Debate in the House of Commons. . . . New York, 30 Rockefeller Plaza, 1949. 31 p.

Central office of information. Reference division. Post-war Britain, 1948–49. British information services. London: H.M.S.O., 1948. 197 p.

INDIA

Government of India information services. U. N. Commission for India and Pakistan. Documents connected with the cease-fire proposal of August 13, 1948. Washington, 2111 Massachusetts Avenue, 1949. 16 p.

MEXICO

Ministry of external affairs and commonwealth relations. Documents regarding Kashmir. Washington, D. C., Gov't. of India Information Services, 1949. 17 p.

MEXICO

Universidad de México. Instituto de historia. Repertorio bibliográfico de los Archivos Mexicanos y de las colecciones diplomáticas fundamentales para la historia de México. México, D.F., 1948. 186 p. (Publicaciones. Primera serie, no. 6.)

NETHERLANDS

Netherlands information bureau, New York. The political events in the Republic of Indonesia. New York, 10 Rockefeller Plaza, 1949. 64 p.

POLAND

Polish embassy, London, Eng. Poland, Germany, and European peace: official documents 1944–1948. Washington, 1949. 116 p. 3/.

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UNION OF SOVIET SOCIALIST REPUBLICS

Ministry of foreign affairs. The Soviet Union and the Korean question. (Documents.) Moscow, 1948. 84 p.

VENEZUELA

Ministerio de relaciones exteriores. Informaciones dadas por el Ministerior de relaciones exteriores de los EE. UU. de Venezuela. (This is a monthly periodical, the first issue of which appeared in January, 1949. It is a general information bulletin, containing economic and industrial as well as legal items. It is processed.)

INTERNATIONAL LABOUR OFFICE

Labour courts in Latin America. Geneva, 1949. 110 p. 75*2.*

PAN AMERICAN UNION

The Pan American Union in March, 1949, began the publication of three new periodicals: *Américas.* (A monthly magazine on inter-American affairs. $3.00 a year.) *Annals of the organization of American states.* (A quarterly publication of all the official documents of the Organization. $2.00 per year.) *Lea.* (A monthly list of Latin-American books and periodicals, replacing the old Pan American Bookshelf. It is a more ambitious effort than its predecessor. Number 2, for April, contains an author and subject index to periodical articles in the social sciences in North and South America.)

Material informativo y antecedentes compilados por la Unión Panamericana. Washington, D. C., 1949. 98 p. (mim.)

The organization of American states and the United Nations, by Manuel S. Canyes. Washington D.C., 1949. 22 p. (processed)

Inter-American economic and social council. Special preparatory commission. Resumen de la sesión celebrada. . . . Washington, D.C., 1949. (Summary of proceedings of the ten sessions.)

International law and organization, department of. Organization of American states; a handbook for use in high school classes and study groups. Washington, D. C., 1949. 66 p. illus.

UNITED NATIONS

Catalogue of economic and social projects. No. 1. Lake Success, N. Y., 1949. 271 p. (1949. II. D. 1.) ("This . . . presents a classified list and description of the work of the Secretariat . . . and of the specialized agencies in the economic and social fields. . . . The Catalogue is the first of a series planned. . . .")

Charter and judgment of the Nürnberg tribunal. History and analyses. (Memorandum submitted by the Secretary-General. Lake Success, N.Y., 1949. 99 p. (1949. V. 7.)

Technical assistance for economic development. Plan for an expanded coöperative programme through the United Nations and the specialized agencies. Lake Success, N.Y., 1949. 328 p. (An analysis of proposals of the various subsidiary organizations.) (1949. II. B. 1)

Ways and means of making the evidence of customary international law more readily available. Preparatory work . . . . Lake Success, N.Y., 1949. 114 p. (1949 V. 6). (An invaluable list and analysis of publications of reports, decisions, etc., of the various countries in the field of international law. Both official and unofficial publications are listed.)

Atomic energy commission group. An international bibliography on atomic energy. Volume 1: political, economic, and social aspects. Lake Success, N.Y., 1949. 45 p. (1949. IX. 1. Vol. I) ("This is the first of two volumes.")

——— Index to the three reports of the Atomic energy commission to the Security Council, 1946–1948. Lake Success, N.Y., 1949. 35p. (mim.)

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Department of Social affairs. Studies of census methods. (From 8 December, 1947, to 6 April, 1949. 8 Studies have been issued, as follows:
1. Collation of results of population and agricultural censuses. 18 p. (processed)
2. 1950 censuses of population. Preliminary report of national and international activities. 12 p. (processed)
3. Problems of defining, identifying, and measuring the agricultural population. 15 p. (processed)
4. The labour force: problems of census definition and enumeration. 50 p. (processed)
5. Investigation of sex, age, marital status, and educational characteristics in censuses of population. 25 p. (processed)
6. Birthplace, nationality or citizenship, and language: problems of census enumeration and definitions. 21 p (processed)
7. Birthplace tabulations in recent censuses. 28 p. (processed)
8. Tabulations of age, marital status, and educational characteristics in population censuses. 40 p. (processed)

Economic and social council. Action taken in pursuance of the agreements between the United Nations and the specialized agencies. Report of the Secretary-General. (ninth session.) Lake Success, N.Y., 1949. 133 p. (mim.)

——— Composition of the economic and social council and subsidiary organs. Lake Success, N.Y., 1949. 21 p. (mim.)

——— Projet de Charte des Nations Uniés sur les droits de l'enfant. Rapport du Secrétaire général. Lake Success, N.Y., 1949. 94 p. (mim. There will be an English edition.)

——— *Fiscal division.* (Public finance data for Austria 1937–1949, Brazil 1936–1949, Costa Rica 1938–1948, Sweden 1937–1950, and the U.S.S.R. 1937–1949, have been issued (all mimeographed, 1949.)

——— Economic development of under-developed countries. Measures devised . . . to promote economic development and raise standards of living. . . . Lake Success, N.Y., 1949. 100 p. (mim.) *Same,* Methods of financing . . . . Lake Success, N.Y., 1949. v.p. (mim.)

Economic and social council. Étude de la situation des apatrides . . . 2me. fasicule. Lake Success, N.Y., 1949. 88 p. (mim.)

——— Implementation of recommendations on economic and social matters. Lake Success, N.Y., 1949. 90 p. (mim.)

——— Relations with and coördination of specialized agencies. Coördination of migration activities. Lake Success, N.Y., 1949. 35 p. (mim.)

——— Report of the international refugee organization. Lake Success, N.Y., 1949. 95 p. (mim.)

——— Report of the secretary-general on coördination of cartographic services of specialized agencies and international organizations. Lake Success, N.Y., 1949. 116 p. (mim.)

——— Report of the Secretary-General on relations with inter-governmental organizations. Lake Success, N.Y., 1949. 48 p. (mim.)

Series symbols for documents of the economic and social council. Prepared by the documents index unit. Lake Success, N.Y., 1949. 30 p. (mim.)

——— *Commission on human rights, Fifth session.* United States: proposals relating to the draft international covenant on human rights. Lake Success, N.Y., 1949. 46 p. (mim.)

——— *Division fiscale.* Conventions fiscales internationales. Lake Success, N.Y., 1948. 474 p. (1948. XVI. 2. There is an English edition, not yet seen.)

——— *Fiscal division.* Questionnaire on the tax treatment of foreign nationals, assets and transactions. Reply of the Government of the United States. Lake Success, N. Y., 1949. 57 p. (min.)

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——— *Secretary-General.* Study on the position of stateless persons. Volume II. Lake Success, N.Y., 1949. 89 p. (mim.)

General assembly. Historical survey of the question of international criminal jurisdiction. Lake Success, N.Y., 1949. 55 p. (mim.)

Library services. Indexes and checklists of United Nations and specialized agency documents and publications. Preliminary list for criticism. Lake Success, N.Y., 1949. 56 p. (mim.)

Yearbook on human rights for 1947. Lake Success, 1949. 581 p. (1949. XIV. 1)

NOTES ON SOME RECENT DOCUMENTARY MATERIALS

JAMES B. CHILDS

Library of Congress

In preparation for the work of drafting a constitution for Western Germany undertaken by the Parliamentarischer Rat at Bonn, beginning on September 1, 1948, the Civil Administration Division of the Office of Military Government for Germany (U.S.) issued at Berlin in lithographic form under date of May, 1948, a study and compilation of 280 pages, legal cap size, entitled *Comparative Federal Constitutions.* This work, prepared by Kurt Glaser, analyzes the basic features, and reproduces the text in English, of the constitutions of Switzerland, Canada, Australia, U.S.A., Soviet Union, Yugoslavia, Germany (Weimar), France, and the Union of South Africa. Under the date of September, 1948, an enlarged form of the study and compilation (v, 392 p., legal cap size) was issued in German under the title *Bundesstaatliche Verfassungen*, containing the text in German of the constitutions of Switzerland, Canada, Union of South Africa, Australia, U.S.A., Brazil, Soviet Union, Yugoslavia, Germany (Weimar), France, and Italy.

Under the title *Justiz und Verfassung*, the Zentral-Justizamt für die Britische Zone at Hamburg published a volume of five papers (157 p.) in the series "Sonderveröffentlichungen des Zentral-Justizblatts für die Britische Zone" as its contribution in preparation for the deliberations of the Bonn convention.

In *Neue Justiz*, published by the Deutsche Justizverwaltung der Sowjetischen Besatzungszone in Deutschland, is reproduced in the issue of December, 1948, on pages 257–264, the text of the draft constitution for "die deutsche demokratische Republik" prepared by the Volksrat in the Soviet zone, a body corresponding to the Bonn Convention in the three western zones.

The combined economic administration of the British and United States zones of Germany began publication of an official commercial chronicle at Frankfurt am Main with year 1, no. 1, dated August 6, 1948, under the title *Öffentlicher Anzeiger für das Vereinigte Wirtschaftsgebiet*, authorized by bizonal law of June 22, 1948 (Gesetz betr. Bekanntmachung über Wertpapiere und in Handelsaachen). This weekly publication in newspaper format, edited by the Rechtsamt der Verwaltung des Vereinigten Wirtschaftsgebietes (cr. law July 30, 1948), contains orders of the bizonal economic administration, reports explanatory of enactments, registration of securities, company financial reports, and the "Zentralhandelsregister für das Vereinigte Wirtschaftsgebiet," and constitutes a continuation of the former Deutscher Reichsanzeiger, published at Berlin for the whole of Germany by the Reichsministerium des Innern through no. 49 of 1945, dated April 14.

In June, 1948, the Camera dei deputati of Italy celebrated the centenary of the Italian parliament by the publication of a volume of 523 pages entitled *Il centenario del Parlamento, 8 maggio 1848-8 maggio 1948.* and containing a series of essays beginning with the history of the first constitution of Italy and concluding with papers on certain aspects of the new constitution. Also included are tables of the presidents of the legislative bodies and of the council of ministers from 1848 to date except for the Fascist period, October, 1922–August, 1943. Further, there is a brief historical sketch of the Palazzo Montecitorio,

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where the Deputies meet, where the Constituant sat, and where the Inter-Parliamentary Union met in September, 1948.

Under the title *Annuario parlamentare, 1948–1949*, the secretary-general of the Camera dei deputati has published in 1948 at the Tipografia della Camera dei deputati a volume of 587 pages containing a brief directory of the members of both legislative chambers, the committees of each chamber, the ministries, the courts, the academies, the universities, regional and provincial administrations and offices, libraries supported by the government, chambers of commerce, industry and agriculture, etc., concluding with a good index.

For the information of electoral officials and others concerned in the matter, the Servizio elettorale of the Ministero dell' interno issued 10 volumes of publications in the series *Elezioni politiche 1948*. First of these was a volume of 248 pages containing the election laws. The seventh, of 582 pages, was devoted to the lists of candidates for the Camera dei deputati, and the eighth, of 407 pages, to the lists of candidates for the Senato della repubblica.

Under the title *Sistema constitucional brasileiro*, Roberto Barcellos de Magalhães has collected in two volumes (Rio de Janeiro, A. Coelho Branco F. o, 1948) the twenty Brazilian state constitutions of 1947, the Federal constitution of 1946, and the organic act for the federal district of January 15, 1948. Transitory article no. 11 of the federal constitud tion provided that within 120 days from the promulgation on September 18 elections should be held in each of the states for governor and for deputies to the Assembléia legislativa which in each instance would function initially to draft a state constitution. Detailed results of the elections held on January 19, 1947, were published by the Tribunal superior electoral of Brazil in the *Diário da justiça*, seção II, ano IV, no. 8, pp. 61–83, March 15, 1948. In 1937 the Câmara dos deputados of Brazil had published a similar collection edited by José Pereira Lira under the title *As constituicões dos estados e da republica*, and there had been earlier collections by José de Castro Nunes in 1922, and by Paulo Dominguez Viana in 1911.

Under the title *Sinopse*, the Câmara dos deputados of Brazil began to publish with 1946–47 (209 p.) an annual legislative summary, listing the laws by number with reference to the publication in the *diário oficial*, the bills, resolutions, reports, etc., each in separate series by author, topic, and number.

The documents of the Committee on the Constitution of the Assembléia constituinte of Brazil, February–September, 1946, have been published in 1948 by the Câmara dos deputados as a separate octavo volume of 488 pages entitled *Anais da Comisão da constituicão.*

The *New Zealand treaty list, 31 March, 1948*, published by the Department of External Affairs, at Wellington, 1948, as "New Zealand treaty series," 1948, no. 11, contains in 147 pages a record for the first time of all international agreements affecting New Zealand, including even a few prior to the first half of the nineteenth century. In the prefatory note of 16 pages is indicated, among other things, the stages by which the New Zealand government shared increasingly in the making by the United Kingdom of agreements affecting New Zealand, and by which it finally achieved the right to make its own international agreements. The first section of bilateral agreements is arranged alphabetically by country and the second section of multilateral agreements by date of signature, there being at the end a full index by subject and by country. The "New Zealand treaty series" was inaugurated with 1944, and the *Annual Report of the Department of External Affairs*, with 1946/47.

In its capacity as the central legislature for India, the Constituent Assembly of India began its sessions on November 17, 1947, and has published its debates in daily pamphlets with cream-colored covers under the title *Constituent Assembly of India (legislative) debates . . . official report* through the Manager of Publications at Delhi. Speeches in Hindu-

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stani are printed in Hindi or Urdu followed by an English translation. The *Constituent Assembly debates* reporting the proceedings in constitution-making are published not only in an English edition, but separately in a Hindi as well as in an Urdu edition.

In October, 1948, the Constituent Assembly of India had a Hindustani translation of the draft constitution printed in both the Devanagri and Persian scripts as an oblong volume of some 320 pages. Thus the draft in English was made available in the language understood and spoken by the vast majority of the people. Accompanying the translation is a 47-page glossary of constitutional terms from Hindi to English and from English to Hindi.

As of July, 1948, the Government of India published at New Delhi a 101 page *White paper on Indian states.* In the foreword, it is stated that "the purpose of the White Paper is to present information, backed by documents, regarding the policy of the Government of India towards the Indian States and the developments that have taken place in respect of the States since 5th July, 1947, when the States Department of the Government of India was set up." Relative to the brief general survey there of the Indian States under the paramountcy of the British crown, the following collection, prepared by C. U. Aitchison, containing the formal documents of such relationships may be mentioned: *A collection of treaties, engagements, and sanads relating to India and neighbouring countries.* 5th edition printed for the Government of India at Calcutta, 1929–33, in 14 volumes. The White Paper is accompanied by two large maps, one showing the provinces, states, and districts prior to the date of division on August 15th, 1947, and the other "the progress of political reorganization of states according to integration and merger schemes up to 31st May 1948."

For Pakistan, the Constituent Assembly met first at Karachi on August 10, 11, 12, and 14, 1947, immediately preceding the partition, then adjourned to take up its constitution-making functions on February 24, 1948, and has published the stenographic reports of proceedings in Hansard format in green-covered daily pamphlets as *Constituent Assembly of Pakistan debates.* In its function as the central legislature for Pakistan, it convened on February 23, 1948, and has published these proceedings in a separate series of blue-covered daily pamphlets as *Constituent Assembly (Legislature) of Pakistan debates.* Both series are available from the Manager of Publications, Government of Pakistan, at Karachi. Bills introduced into the Constituent Assembly and reports of select committees are printed in part V of the *Gazette of Pakistan.*

With September 1, 1948, the democratic republic of Korea, with capital at Seoul, began to publish an official gazette in large octavo size in the Korean language under the title *Kwanbo.* The republic had been proclaimed on August 15. In the first issue is contained the text of the constitution (103 articles) drafted by the National Assembly beginning at the end of May and adopted on July 17. Article one reads: "Korea shall be a democratic republic"; and article four, "The territory of Korea shall consist of the Korean peninsula and its accessory islands," there apparently being no mention implied or otherwise of the northern zone. Also in the same number is not only the inauguration address of President Syngman Rhee, but law no. 1 (July 17) on the organization of the government with eleven ministries as follows: Internal affairs, Foreign affairs, National defense, Finance, Justice, Education, Agriculture and forestry, Commerce and industry, Social affairs, Transportation, Communications. In no. 7 (Oct. 2) of the gazette is law no. 5 of the same date relative to the organization of the legislative body. In order that there may be a better understanding of the governmental organization and legislation of Korea, it would seem desirable that some provision be made for the preparation and publication in English of the more important documents currently.

A summary of the constitution is given on pp. 188–191 of no. 34, July–Aug., 1948 (final issue) of the *South Korean Interim government activities,* prepared by the National Economic Board for the United States Army Forces in Korea. Political, governmental, and legal developments leading up to the establishment of the republic of Korea from the time of the liberation can be traced month by month, first in the *Summation of non-military activities in Japan and Korea,* then from March, 1946, in the *Summation of the United States*

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Army Military Government activities in Korea, and from August, 1947, in the *South Korean Interim government activities*.

For the government of Bahrain, an island shaikhdom in the Persian gulf, noted for the production of pearls and oil, C. Dalrymple Belgrave, adviser to the government, has published an *Annual report for the year 1365* (*December 1945–November 1946*), 111 pages in legal cap size with plates, and another of 67 pages for the year 1366, both printed at the Times of India Press at Bombay. These two reports present in considerable detail the impact upon a native people of the production of oil there as well as in Saudi Arabia, Kuwait, and Qatar. A good ten years ago, the Adviser wrote a report dealing with the administration 1926–36, and the one for 1945–46 covers briefly the intervening period.

Of the series *Constitutional and parliamentary information*, the Inter-parliamentary Union with headquarters at Geneva has published a single number for 1948 (132 p.), being the first number to appear since September, 1939, covering the period September 1, 1939, to June 30, 1947, and reproducing, among other things, the text in English of the constitutions of France and Yugoslavia. The next number is scheduled for 1949, to cover the period July 1, 1947–December 31, 1948. The series is being published also in French, the sole number for 1948 in French with 170 pages being complementary to the English edition, and not identical.

For Indonesia, the name given officially to the former Netherlands Indies in the amended Dutch constitution (*Staatsblad van het koninkrŷk*, 1948, No. I, 425, Sept. 21, 44 pp.), the provisional federal government at Batavia published under date of May 22, 1948, a compilation in two volumes of basic data and documents under the title *Naar de nieuwe rechtsorde in Indonesië, bouwstoffen voor de federatie*. The first part, of 43 pages (also printed in the Indonesian language), is devoted to a general survey of the developments in the organization of the states. The second part, of 223 pages, contains texts in the Dutch and Indonesian languages of the basic general acts and of the acts constituting the following states beyond the area of the Indonesian republic: East Indonesia, West Borneo, Great Dayak, Borneo Tenggara, East Borneo, Bandjar, Bangka, Billiton and Riouw, East Sumatra, South Sumatra, Pasundan, and Madura.

Under the title *Statistisch overzicht verkiezingen 1946*, the Centraal Bureau voor de statistiek of the Netherlands at the Hague has published in 1948 a 177-page report on the elections for the Second Chamber as well as for the provincial and municipal councils. Some historical and explanatory data are given. The table of contents is also given in English.

For the Virgin Islands, the proclamation of Governor William H. Hastie entitled "Results of 1948 referendum" and dated November 15, 1948, at Charlotte Amalie, the capital, publishes in two mimeographed sheets letter paper size (10½×8 in.) the results of the first popular referendum at the election on November 2nd, showing (1) that by a vote of 1530 to 463 they did not favor election of the governor by the people of the Virgin Islands, (2) that by a vote of 2194 to 286 they did favor a resident commissioner in the U.S. Congress, and (3) that they did favor the existing two separate municipal councils and two separate treasuries rather than a single legislature and a single treasury. The referendum was authorized by Bill no. 1 (2 pp. printed letter paper size) of the 13th Legislative Assembly of the Virgin Islands, passed on May 3 and approved on May 14, 1948. A new electoral law for the Virgin Islands (Bill no. 7, 99 pp. printed) was passed by the Legislative Assembly on May 4 and became law without the Governor's approval on June 5, 1948. Under section 7 of the Organic Act, June 22, 1936, the Legislative Assembly is constituted by joint sessions of the Municipal Council of St. Thomas and St. John and of the Municipal Council of St. Croix, called at least once a year. Apparently proceedings and debates have been issued only for two sessions, 1938 (72 pp., 10½×8 in.) entitled *Legislative Assembly*

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Record, vol. 1, no. 2, and 1941 (153 pp. mimeographed, 10½×8 in.) entitled *Proceedings;* but the bills as passed and effective are printed only in separate leaflet form, letter-paper size. Proceedings of the Municipal Council of St. Croix are printed currently in leaflet form, but those of the Municipal Council of St. Thomas and St. John seem to have been printed only through June 30, 1946. Enactments of each municipal council in the form of ordinances usually styled as Bill or Municipal Council Bill, as well as the resolutions, are normally printed only in separate leaflets, letter-paper size, after having been passed and become effective. A set of the legislation enacted in the Virgin Islands for the fiscal years 1936–39, 1940, and 1941, has been printed at Washington, D.C., by the Government Printing Office as House Documents. Executive orders of the governor are normally printed in the same letter-paper format.

"A ready guide to the principal reports of legislative commissions and the departments of state government" is furnished by the 256-page *Bibliography of New Jersey official reports, 1905–1945*, compiled by Dorothy Fordyce Lucas and published by the Division of State Library, Archives, and History at Trenton in 1947. This work, planned to continue A. R. Hasse's *Index of economic material in documents . . . of New Jersey, 1799–1904*, should aid materially in the use of this body of complicated documents, and at the same time prove an incentive for other states to encourage the preparation and publication of similar guides. As a matter of fact, considerable documentary bibliography of several states are said to exist in manuscript, awaiting availability of funds to print.

In Canada, a preliminary check list entitled *Publications of the governments of the North-West territories and the province of Saskatchewan, 1877–1947*, prepared by Christine MacDonald and issued by the Legislative Library at Regina, Sask., in 1948 (84 leaves, mimeographed, legal cap), marks another badly needed stride towards registering and making accessible the provincial documents.

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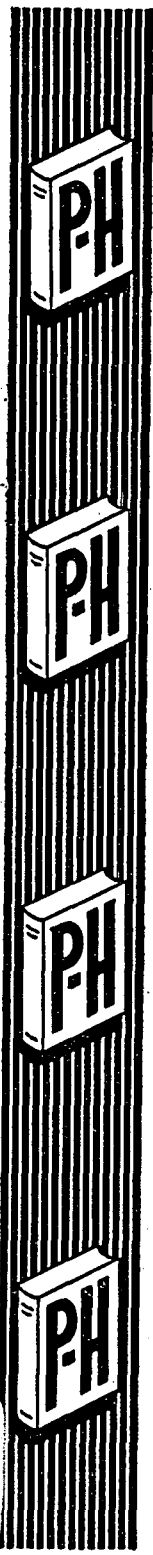

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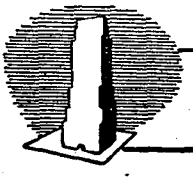

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